1. When I say **know the definition of appellate courts**, I mean you need to know that all these things are true:
   a. They create all common law rules
   b. They include the state courts of appeal, which I will sometimes call the “intermediate courts of appeal” and the state supreme court.
   c. They include the United States Courts of Appeal, which function as the intermediate courts of appeal in the federal system, and the U.S. Supreme Court.
   d. They generally accept the factual findings of the trial court; although they are permitted to replace the trial court’s factual findings with their own, using the trial court’s evidence and testimony, in the rare event that they find no evidence at all to support the trial court’s factual finding.

   ...and all these things are false:
   e. They are sometimes permitted to hear testimony from witnesses and receive a limited number of new documents into evidence to aid them in making their own determination of the facts.
   f. They sometimes convene with only one judge presiding over them.
   g. They sometimes have juries.
   h. They only hear criminal cases.
   i. Only the federal court system has them.

2. When I say you need to **know the definition of dram shop laws**, I mean you need to know everything it says on slide 6-48.

   **Dram Shop Laws**
   ✓ Generally make liquor stores, bars, and restaurants – but not social hosts - liable for any injuries that arise from serving alcohol to intoxicated persons or minors who subsequently cause death or injury to third-parties.

3. When I say know the definition of the negative or dormant aspect (of the Commerce Clause), I mean you need to be able to recall, just from seeing the phrase “the negative aspect of the Commerce Clause” or the phrase “the dormant aspect of the Commerce Clause” that either of these phrases is equivalent to saying “the state governments of the United States are forbidden from passing or enforcing laws that affect interstate commerce,” which is equivalent to saying “the state governments of the United States are forbidden from passing or enforcing laws that treat differently in any discriminatory way products made within a state from similar products made outside that same state.”
4. When I say know the definition of diversity case, I mean know that any case that exits the diversity of citizenship box in slide 3-20 along the yes arrow is a diversity case.

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“Diversity of citizenship”
Concurrent Jurisdiction
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5. When I say know the definition of common law, I mean know and understand everything it says on slide 1-27:

**Common Law**
Judge-made law, embodied in the decisions made by appellate courts over the years.

✓ What gives the past decisions of appellate courts legal power?
   Answer: The doctrine of *stare decisis*.

6. When I say know the definition of strict liability in the chapter 7 vocab list, I mean you need to understand the significance of the parenthetical comment on item 5 of slide 7-14:

**Five Types of Mens Rea Requirements**

1. General intent
2. Specific intent
3. Criminal recklessness
4. Criminal negligence
5. Strict liability (meaning no mens rea requirement)

These comments from the “speakers notes” that accompany slide 7-14 may be helpful in this regard: “Strict liability crimes do not require any proof of an intent to commit the wrongful act. If you committed the act, you are guilty, regardless of mental state or the presence of any irresponsibility on your part. Examples: False weights and measures, selling alcohol to a minor, and most administrative crimes, such as inaccurately preparing your tax return or polluting a river or bay.”
7. In addition to knowing the meaning of the word defamation, you also need understand the related word “defamed.” Specifically, you need to know that the statement “Bill defamed Karen” is equivalent to saying “Bill committed the tort of defamation against Karen.”

8. Know the facts, issue, and decision of the U.S. District Court for the Eastern District of Arkansas in the case of Jones v. Clinton. (Chapter 3)

9. When I say know the meaning of the expression “writ of certiorari,” I mean among other things to know that: 1. when a party wants the U.S. Supreme Court to hear a case, that party must file a petition for a writ of certiorari, and 2. when the U.S. Supreme Court “issues a writ of certiorari,” it means they the court have agreed to hear a particular case. Your book gets it right in the body of the text on page 52, but their definition both in the margin on page 52 and in the glossary at the back of the book is not quite correct.

10. 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 decision on the federal statute called the “Gun-Free School Zones Act.”

11. When I say know the definition of larceny I mean know both the definition found in boldface type on page 167 and that shoplifting is a form of larceny. The textbook gives at least three examples of larceny on page 167: some stolen tennis shoes, a stolen power saw, and a reference to some stolen sweaters.

12. When I say know the definition of punitive damages, I mean know and understand everything it says about them on slide 6-30, as well as knowing the definition in the glossary of your textbook:

   **Punitive Damages**
   ✓ Are not common
   ✓ Sole purpose is to punish and deter the behavior of the defendant
   ✓ Further compensation of the plaintiff occurs but is not any part of the purpose of punitive damages. It is an accidental side-effect.

13. Know the meaning of the first two bullet points on slide 5-23:

   **Obscenity**
   ✓ Has never received constitutional protection
   ✓ But profanity and offensive works have.

14. When I say know the definition of substantive law, I not only mean know the definition on page 12 of your textbook; but also be able to recognize a substantive rule of law and distinguish it from a procedural rule of law. Slide 1-7 and the seven slides that follow it will help you learn how to do this. Here is slide 1-7:

   **Two Types of Legal Rules**
   1. **Substantive rules:** Rules that state (list) things people legally can’t do and/or things people legally must do in a wide variety of settings.
   2. **Procedural rules:** Rules that govern the behavior of the participants in the civil litigation and criminal prosecution processes.

15. When I say know the definition of the Identity Theft and Assumption Deterrence Act, I mean know everything it says in the first two sentences of the third bullet point on page 170: “The Identity Theft and Assumption
Deterrence Act bars the use of false identification to commit fraud or other crime. A waiter who uses stolen credit card numbers to buy airline tickets has violated the act.

16. Be able to recognize a situation in which a person will be protected from a defamation lawsuit by the qualified privilege defense. The contents of slides 6-16 and 6-17 should help you do this:

**Qualified Privilege**

**Conditions/Limitations:**
1. Acts in good faith
2. Talks only to someone who ought to know

**Qualified Privilege Example**

Bob Brewer lives in a housing project. He passes the open apartment front door of his next door neighbor one day and glimpses from the hallway what certainly appear to be pistols, automatic weapons, and cardboard boxes stacked throughout the living room. He goes to his building superintendent and says "My neighbor is selling guns - pistols and automatic weapons." The building superintendent investigates and finds out they are toy guns which the neighbor is selling legally as a toy wholesaler. True or false: The neighbor can still successfully sue Bob for defamation because Bob stated his belief in the form of a fact. He should have said "In my opinion..." at the beginning of his statement. Because he failed to do so, he can now be successfully sued by the neighbor for defamation.

17. Know that the Tenth Amendment to the U.S. Constitution says “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people,” and what those words mean. Slide 5-4 tells you what they mean:

**A Government of Enumerated Powers**

- Article I, section 8 enumerates those issues on which Congress may pass statutes.
- The Tenth Amendment says if they forgot to put it on the list, then that power falls to the states and/or the people.

18. Be able to recognize a factual situation in which the doctrine of res ipsa loquitur would very likely apply. Slides 6-54, 6-59, and 6-60 should be helpful in this regard:
19. 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 merely 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.

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

21. Know that both the federal and state governments can place many restrictions on speech in the United States
    despite the presence of the First Amendment in the United States Constitution. These include but are not
    limited to:
   a. The state governments can outlaw the expression of *speech that is obscene* in public places.
   b. Both the state and federal governments can outlaw the expression of *political speech* if it is intended
      and likely to cause imminent lawless action.

Kyle was driving on a freeway and he passed under an overhead roadway that was being repaired by LSO Construction. As Kyle
emerged from under the overpass, a steel truss dropped from the roadway above, 
mashing into Kyle's car and injuring Kyle.
LSO was working alone on the overhead 
roadway and had exclusive control over the 
steel trusses being installed. Kyle sued LSO 
for negligence. What type of lawsuit should 
Kyle file and what should he argue?

Higgins and some friends went to a night baseball game at 
Comiskey Park in Chicago. Near the end of the game, 
Higgins went to the men's room. On his way back to his seat, 
he walked down a corridor that ran past a concession stand. 
As he passed the stand, the door to the front of the stand (a 4' 
by 6' sheet of plywood attached to the ceiling with hinges and 
held in the open position with a hook-and-eyelet, also affixed 
to the ceiling) fell from its open position and struck him on the 
head, causing permanent head and neck injuries. None of the 
eyewitnesses to the incident saw anyone touch either the door 
or the hook securing it, or do anything that might have caused 
the door to fall. There was however testimony that, just before 
the door fell, the crowd in the stadium was screaming and 
stampeding, and that one “could feel the place tremble.” What 
tort should Higgins sue for and what should he argue?
c. Both the state and federal governments can outlaw the expression of political speech if it interferes with a fundamental right of another person, such as the right of that person to use a Planned Parenthood clinic for abortion counseling or other services.

d. The state governments can place many restrictions on commercial speech, even when their purpose is one that may seem frivolous to a layperson, such as the goal of “keeping our downtown area aesthetically pleasing.” For these restrictions to withstand constitutional scrutiny, the state government must persuade the court that they have met a three-part test, outlined in slide 5-29:

Salib v. City of Mesa

Three part test:
1. The government has a substantial interest
2. The restriction directly advances this interest
3. The restriction is narrowly tailored to meet the goal

22. Know that the “plain meaning rule” in statutory interpretation can be stated as follows: If a court can answer all of its questions about what a law means by using an ordinary dictionary together with a law dictionary (such as Black’s Law Dictionary) together with the glossary of terms found in the statute itself, then the court must stop the process of statutory interpretation there. They cannot proceed to the second step, which is legislative history and intent, to modify their interpretation of the statute.

23. Know that the “plain meaning approach” in statutory interpretation means using an ordinary dictionary together with a law dictionary (such as Black’s Law Dictionary) together with the glossary of terms found in the statute itself to decode and understand all the words and phrases in the statute, and thereby to understand what the statute means.

24. Know and understand each of the four required elements of the tort of battery. Know that it is not necessary that the plaintiff prove that the defendant intended harm. All that is necessary is that the plaintiff prove that the defendant intended to accomplish the touching, which then turned out to be either harmful or offensive.

25. Know that seven justices sit on the California Supreme Court, and that each of those justices must be present for all parts of all cases heard by the California Supreme Court.

26. Know that nine justices sit on the United States Supreme Court, and that each of those justices must be present for all parts of all cases heard by the United States Supreme Court.

27. Know that if someone is suing someone else, you are looking at a civil trial. There is no way to “sue” someone in criminal court.

28. Know that obscenity has never received constitutional protection under the First Amendment, but profanity and offensive works often have. Know that the Miller Test can help you find the boundary between obscenity and everything else.

29. Know that an injunction can only be issued by a judge exercising equitable powers. It cannot be authorized by a jury.
30. Be able to use the flow chart in slide 3-20 to determine when a case based on state law can only be heard in state court (there is exclusive state jurisdiction), and when it can be heard in either state court or federal court (there is concurrent jurisdiction).

31. Know that is somebody is being “prosecuted” for something, you are looking at a criminal trial. There is no way to “prosecute” someone in a civil trial.

32. Know that one of the lessons we can draw from the case of Zeran v. America Online (chapter 6, page 135) is that in the United States, an Internet Service Provider (ISP) such as America Online may not be held liable for defamation based on a posting on its bulletin board because they are shielded from such liability from specific language in a federal statute called The Communications Decency Act. You may find the speaker’s notes that accompany slide 6-14 helpful in understanding this.

**Zeran v. America Online**

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33. Please add the following cases to the list of cases you should study in preparation for the midterm: Hernandez v. Montville (page 69) and Texas v. Johnson (page 114).