# Suggested Additional Assignments

Research

Students should pick up an issue of any newspaper. They should see how quickly they can spot *ten* articles dealing with legal issues. The articles might refer to contract disputes, negligence suits, international trade agreements, statutory debates in Congress, environmental conflicts, employment issues, and so on. If they time themselves as they search, they should be able to find ten articles in two minutes or less. Students should select an article that interests them and be prepared to discuss it.

Read and Write

Students should be directed to read the two quotes provided with the lesson materials and think about the meaning of each, as well as their position as to each perspective represented. Finally, students should draft a brief essay in which they discuss which of the two aligns more closely with their view of law today, and most important why. Encourage the students to cite to specific reasons they hold their position. The papers can be used as a discussion point in the classroom setting, and should also be retained by each student in the Personal Reference Journal (**PRF**) recommended as a learning tool in this course. The student should organize the materials in the PRJ as he or she determines fits best for the individual learning and organizing style.

This exercise could be used in the final lesson as a discussion point and as the basis for another essay in which the student compares and contrasts the views held at the beginning and end of the coursework.

The above exercise is particularly effective when coupled with the before and after treatment of the poll below.

**Poll:** At the beginning of a course it can be useful to get a feel for student attitudes about law and lawyers. This poll can be copied and distributed on the first day; both students and professor may find the responses interesting. Once completed, the students should be asked to retain a copy in their **Personal Reflections Journal (PRJ**): In the last session, the students should be given the same poll again. The responses, particularly changes should be discussed, and students should be asked to indicate specifically what part of the course repeated to the changed response, and why the initial response changed.

|  | **Strongly Agree 5** | **4** | **Neutral: 3** | **2** | **Strongly Disagree 1** |
| --- | --- | --- | --- | --- | --- |
| 1. A system of laws is essential in a democratic society. |  |  |  |  |  |
| 2. The American legal system is one of the best in the world. |  |  |  |  |  |
| 3. The American legal system is deeply flawed and needs major reforms. |  |  |  |  |  |
| 4. The American legal system makes no sense. |  |  |  |  |  |
| 5. Lawyers are among the most dishonest people in the United States. |  |  |  |  |  |
| 6. Lawyers are paid too much. |  |  |  |  |  |
| 7. Being on a jury is a waste of time. |  |  |  |  |  |
| 8. Juries frequently award absurdly high judgments. |  |  |  |  |  |
| 9. It is fairly easy to manipulate the legal system. |  |  |  |  |  |
| 10. The legal system often abuses large corporations. |  |  |  |  |  |
| 11. Large corporations often abuse the legal system. |  |  |  |  |  |
| 12. Other nations do a better job than the United States of resolving disputes. |  |  |  |  |  |
| 13. There is no real value in learning about law unless you are going to law school. |  |  |  |  |  |
| 14. The typical business executive has more integrity than the average lawyer. |  |  |  |  |  |

In the final week of the course, the students should be given another blank copy of the poll, and after completion, compare their responses. If any have changed, they should briefly explain the change, supporting their explanation with specific aspects of the course work that contributed to the change. If some of the responses have remained the same, they should indicate what specifically in the course reinforced their initial response prior to completing the course work.

**Note:** **The** **Personal Reflection Journal (PRJ)** is designed and organized by each student in a format and style consistent with their learning and organizational style. The materials included show the progression of the learning experience, retains copies of material the student finds particularly important such as case opinions, or statutes, or articles or his or her own jottings on topics which the student found particularly compelling can be retained. The Journal is frequently used to collect various written assignments the student completes, to use in the future as part of a portfolio for a prospective employer, or other applications where the student is required to demonstrate competence, understanding and critical thinking skills. The individual instructor determines if review with the student is helpful. Often, reviewing the materials in the journal midterm, not necessarily for grade, but for purposes of midterm progress reports is extremely useful to demonstrate to the student progress, learning, and understanding acquired throughout the coursework. The Journal also provides tangible evidence to the student that the materials covered in the coursework are relevant and applicable to real life.

# Chapter Overview

Chapter Theme

The principles discussed in this book are practical. Neither the book nor the course is a theoretical exercise. The law will *affect you,* regardless of your career, whether you want it to or not. The more you understand the law, the more you can use it for your own productive purposes.

Quotes of the Day

“Good laws have their origins in bad morals.” —Ambrosius Macrobius. “I believe there are more instances of the abridgement of the freedom of the people by gradual   
and silent encroachments of those in power than by violent and sudden usurpations.” —James Madison, 4th President of United States (1751–1836)

Three Important Ideas about Law

### Power

Laws affect nearly everything we do every day. At work, employment law and contract law issues control how many hours we can work, conditions of the work environment and even matters of ownership of our ideas. In our leisure time, we deal with the law through banking, copyright protections, and contracts (remember that gym membership contract you signed?).

### Importance

A society cannot function without laws.

### Fascination

Law is intriguing.

Key Issue: Complexity

It is often frustrating to students, citizens, and even lawyers that law is so complex. There are reasons for its intricacy. Anglo-American legal history consists, in part, of the clash of powerful, competing interests, such as ownership of property, ethics, raw power, business practices, personal responsibility, and the need for predictability. To understand the interplay of these forces is to see why law is complicated.

Action Learning

From the newspaper article about a legal issue selected earlier, students should identify two or more *competing* interests. For example, in an article about a securities suit, they should compare (1) the right of an injured investor to seek compensation and (2) the right of a corporation to be free of vexatious litigation. In an article about tobacco litigation, they might compare the tobacco companies’ property interest in a profitable commodity; the companies’ obligation to divulge what they knew concerning nicotine; the personal responsibility of those who chose to smoke; the state’s interest in reducing medical costs; the companies’ right to free speech (advertising); the federal government’s interest in regulating smoking; and the state’s obligation to protect children. The more important the legal issue, the less likely it is that there is a simple solution that will make everyone happy. At the conclusion of the discussions, instructors should summarize the discussion points presented, and point put to the students that the variety of issues and positions is a prime example of what law in real life actually is, and how it can become complex if a number of different positions emerge on one fundamental issue, and the potential for irreconcilable differences even following reasonable discussion.

Current Focus Discussion Topics: Collective Responsibility

Here is an example of a collective responsibility issue. The company for which you are employed is under pressure from the stockholders to increase profits and manufacturing quotas to retain the market share the company has historically maintained. This pressure requires the firm to run the machinery around the clock and thereby eliminate the customary downtime to maintain the equipment, and ensure that it is in peak operating condition. The company justifies the decision to do so base upon the record of injury free operation that they have enjoyed in the past. The company also claims they will only keep this schedule during the peak season and will return to the two shifts on, one off schedule thus resuming the customary maintenance schedule previously applied. Needless to say, the equipment begins to show the strain, the employees are unhappy, but nonetheless, both profits and production show improvement.

**STUDENT DISCUSSION**: What are the interests of each participant or stakeholder? What is the collective interest and responsibility? How do the competing interest become reconciled to meet the goals and ideals of each stakeholder? These are some of the discussion promoters that the instructor should present to the students to stimulate discussion and thinking. Necessarily, there is not one correct answer. Rather there is a negotiated response that recognizes the interest, needs and limitations of each, and resolves the situation in a way that respects each as well as the collective responsibility.

For an interesting perspective on collective corporate responsibility, direct students to read the following: S. R. Ratner, “[Corporations and Human Rights: A Theory of Legal Responsibility,” *Yale Law Journal* 111](http://www.questia.com/PM.qst?a=o&d=5000938232), no. 3 (2001): 443–545.

Divide the class into pairs or teams to read, discuss, summarize and comment on the article and its value for corporate America and daily operations.

Sources of Contemporary Law

### United States Constitution

The supreme law of the land, the U.S. Constitution establishes the federal government and distributes powers among the federal and state governments and individual citizens. It also creates a system of checks and balances among the branches.

**Legislative power** is the ability to create new laws; it is balanced by executive power of the veto and judicial power of interpretation and determination of validity.

**Executive power** is the ability to enforce laws; it is balanced by the legislative power to override a veto and to impeach and the judicial power to interpret.

**Judicial power** is the power to interpret laws and determine their validity; it is balanced by the executive power to appoint justices and legislative power to approve justice nominees. Congress can also amend the Constitution with the approval of the states.

### Statutes

The Constitution gives to the Congress the power to pass laws on various subjects. A proposed law is called a bill; a bill that has become law is called a statute.

### Common Law

The collective body of court decisions throughout history comprise the common law. Judges of all courts below the Supreme Court will refer to previous cases (precedent) to rule on present cases. The principle that precedent is binding on later cases is called *stare decisis*, meaning, “let the decision stand.”

### Court Orders

Sometimes judges issue court orders on a particular person or entity. This may be an order to do something or an order to refrain from some action.

### Administrative Law

Administrative agencies are created by Congress or by an order of the President. Their purpose is to carry out the day-to-day work of enforcing the statutes passed by Congress. Agencies have the power to create regulations, which are as binding as laws.

Classifications of Law

### Criminal and Civil Law

Most law is civil law. Most law depicted on television is criminal. Therein lays a challenge for many students. Civil law does not involve guilt or punishment, the two concepts that television law endlessly portrays.

**Question:** What is wrong with this sentence: “The court found Sheila guilty of breaching the contract”?

**Answer:** Breach of contract is a civil law issue, and therefore does not involve guilt or punishment. If the plaintiff wins, the defendant must pay compensation.

**Question:** Why does society distinguish between criminal and civil law?

**Answer:** With criminal law, society outlaws behavior that proves threatening to the whole populace. Arson is dangerous because it costs lives, destroys property, and drives up insurance costs. Civil law is different. Sheila’s breach of contract does not threaten the fabric of society, and no prosecutor will seek to jail her. Yet an injured party is entitled to compensation. With civil law, society establishes certain ground rules but requires the parties themselves to resolve disputes.

### Law and Morality

Law and morality are clearly different yet obviously related. How should a citizen respond to a law that seems immoral? As an example, look at the Proposition 187 controversy.

**General Questions:** What are students’ reactions to the controversy surrounding Proposition 187 in California? A high school principal refused to comply with the law because he considered it unethical. The text supplies several bullet points responding to the principal’s statements. With which argument(s) do students agree, and why?

**Question:** Those who believe that the principal has *the right to ignore* a law he regards as unethical should consider this: Suppose a state law requires a home seller to notify any potential buyer of serious hidden defects, such as a cracked foundation. A seller regards the law as an immoral interference with his right to dispose of property. Must he obey the law?

**Answer:** Perhaps citizens have a somewhat greater right to make moral decisions concerning laws that affect human rights, but no such value judgments concerning contract law principles.

**Question:**  Those who believe that the principal has *no right to ignore* a law he regards as unethical should consider whether there are any laws they would not obey. Ask them to imagine being a school principal in the South in the early 1950s: would they have enforced racial segregation because it was the law?

**Answer:** Racial segregation had no legitimate purpose, whereas supporters of Proposition 187 say that its purpose is entirely sensible: to reduce tax expenditures for illegal aliens.

Although we all engage in contractual relationships on a regular basis, there is not always an equal bargaining position. For example, when you purchase a car, and need to finance it, the bank does not permit negotiating of the rate. The rate offered, based upon the cost of the vehicle, down payment, credit worthiness of the buyer and other variables dictates the interest rate. Many believe this is unfair to the consumer.

**Question:** When parties with unequal power create a contract, should the law more vigorously pro­tect the weaker party?

**Answer:** When two corporations contract, courts generally ignore inequalities of bargaining power unless one party had a huge advantage and used it unfairly. When a corporation deals with a con­sumer, both the UCC and the courts tend to give greater protection to the consumer, though not always.

**Question:** Shouldn’t a court always look out for a weak party, whether corporate or consumer?

**Answer:** Probably not. The more a court “protects” one party, the more it interferes with the parties’ ability to contract. Generally, courts begin with the assumption that adults are able, and entitled, to make their own deals and that they should live with the results.

**Question:** To the extent protections for the consumer or other parties with lesser bargaining position entering into contractual arrangements have been put in place, briefly describe your understanding of the protections the law incorporated. And the rationale for this body of law.

**Answer:** Consumer protection laws, UCC, opinions rendered in cases where blatant abuse occurred.

**NET TOURING:** Recommend to students that they search for federal and state consumer protection laws, book mark where they located each, and as appropriate retain copies of the references including brief descriptions in their **Personal Reflection Journal (PRJ).**

Analyzing a Case

j0199759Case: *Kuehn v Pub Zone*[[1]](#footnote-1),

**Facts:** Maria Kerkoulas owned the Pub Zone bar, frequented by many motorcycle gangs, and knew from her own experience and conversations with police that some of the gangs, including the Pagans, were dangerous and prone to attack customers for no reason. Kerkoulas posted a sign prohibiting any motorcycle gangs from entering the bar while wearing “colors,” that is, gang insignia. Based on her experience, she believed that gangs without their colors were less prone to violence.

Rhino, Backdraft, and several other Pagans pushed past the bouncer wearing colors and approached the bar. Although she saw their colors, Kerkoulas served them one drink. They later moved towards the back of the pub, and Kerkoulas believed they were departing. In fact, they followed a customer named Karl Kuehn to the men’s room, where without any provocation they savagely beat him, causing serious injuries.

Kuehn sued the Pub Zone. The jury awarded him $300,000 in damages. The trial court judge overruled the jury’s verdict and granted judgment for the Pub Zone, meaning that the tavern owed nothing. The judge ruled that the pub’s owner could not have foreseen the attack on Kuehn, and had no duty to protect him from an outlaw motorcycle gang. Kuehn appealed.

**Issue:** Did the Pub Zone have a duty to protect Kuehn from the Pagans’ attack?

**Holding:** Yes. Whether a duty exists depends upon an evaluation of a number of factors including the nature of the underlying risk of harm, the opportunity and ability to exercise care to prevent the harm, the comparative interests of, and the relationships between or among the parties, and, based on considerations of public policy and fairness, the societal interest in the proposed solution.

Since the possessor [of a business] is not an insurer of the visitor’s safety, he is ordinarily under no duty to exercise any care until he knows or has reason to know that the acts of the third person are occurring, or are about to occur. He may, however, know or have reason to know, from past experience, that there is a likelihood of conduct on the part of third persons in general which is likely to endanger the safety of the visitor, even though he has no reason to expect it on the part of any particular individual.

The totality of the circumstances presented in this case give rise to a duty on the part of the Pub Zone to have taken reasonable precautions against the danger posed by the Pagans as a group. There was no reason to suspect any particular Pagan of violent conduct, but Kerkoulas knew the gang collectively had engaged in random violence. Thus, Kerkoulas had knowledge, as the result of past experience and from other sources, that there was a likelihood of conduct on the part of third persons in general that was likely to endanger the safety of a patron at some unspecified future time.A duty to take precautions against the endangering conduct thus arose.

**Question:**  What kind of case is this, civil or criminal?

**Answer:** Civil.

**Question:** What is the difference?

**Answer:** In a civil suit, one party is suing the other. In a criminal prosecution, the government is seeking to punish someone for conduct that society will not tolerate.

**Question:** Who is the plaintiff and who the defendant?

**Answer:** Kuehn is the plaintiff and Pub Zone is the defendant.

**Question:** What is the key issue in this civil suit?

**Answer:** Whether Pub Zone had a duty to protect Kuehn.

**Question:** Why does Pub Zone claim it had no duty to Kuehn?

**Answer:** The attack was unforeseeable and Pub Zone was not responsible for guaranteeing the personal safety of its patrons.

**Question:** What did the trial court conclude?

**Answer:** Although the jury found in favor of Kuehn and awarded him $300,000 in damages, the trial court judge overruled the verdict and damage award and granted judgment for Pub Zone.

**Question:** What did the appellate court decide?

**Answer:** That Pub Zone *did* have a duty to protect Kuehn. The court reinstated the jury verdict and damage award.

**Question:** Why did the court decide that Pub Zone had a duty?

**Answer:** Kerkoulas’ sign prohibiting patrons from wearing gang colors, and the Pub Zone’s practice of calling police when patrons violated this rule, showed the Pub’s awareness of the risk of violence of such gangs. Kerkoulas also knew that the Pagans had participated in past acts of random violence. Thus, Pub Zone had a duty to take precautions against such violence.

**Question:** What should Pub Zone have done to satisfy its duty?

**Answer:**

* Enforce its existing rules. Despite Pub Zone’s policy against gang colors, Kerkoulas allowed the Pagans to remain in the bar and drink.
* Train bouncers and all other staff to be aware of patrons from whom such violence is foreseeable. If such patrons refuse to leave the club when asked, Pub Zone should be consistent in calling the police to address the problem.

You Be the Judge: *Soldano v. O’Daniels*[[2]](#footnote-2)

Note: There are two reasons for using this case. First is to introduce students to the “You Be the Judge” feature. There is one such case in almost every chapter. The text provides the facts and issue and then, in place of the court’s holding, gives competing arguments for the two sides. The text’s authors wrote the arguments, often based on majority and/or dissenting opinions in the case. Since students do not have the “answer,” they are forced to think for themselves.

An instructor can use these cases in many ways.

* Divide the class in two and assign each side to argue for one of the parties.
* Have students vote on the outcome before and after revealing the court’s holding.
* Require students to prepare a short paper giving their own “holding.”
* Have one or two students argue each side before the “court” (the professor and remaining students).

The second reason for using this case is that it builds on the issue of negligence introduced in the *Kuehn v Pub Zone* case, above. This time the court confronts a fight that resulted in a death. The victim’s distraught family members sued the owner of a bar, claiming that one of his employees was partly responsible for the death. Once again, the defendant asked the court to dismiss the case, claiming that he they owed no duty to protect the victims—the same argument made by the Pub Zone.

**Facts:** In the days before cell phones, a fight broke out at Happy Jack’s Saloon. A Good Samaritan ran across the street to the Circle Inn. He asked the bartender at the Circle Inn to let him use the telephone to call the police but the bartender refused.

Back at Happy Jack’s Saloon, the fight escalated, and a man shot and killed Soldano’s father. Soldano sued the owner of the Circle Inn for negligence. He argued the bartender violated a legal duty when he refused to hand over the Inn’s telephone, and that, as the employer of the bartender, O’Daniels was partially liable for his father’s death.

The lower court dismissed the case, citing the principle that generally, a person does not have a legal responsibility to help another unless he created a dangerous situation in the first place. Soldano appealed.

**You Be The Judge:** Did the bartender have a duty to allow the use of the Circle Inn’s telephone?

**Argument for the Defendant:** Your honors, my client did not act wrongfully. He did nothing to create the danger. The fight was not even on his property. We sympathize with the plaintiff, but it is the shooter, and perhaps the bar where the fight took place who are responsible for his father’s death. Our client was not involved. Liability can only be stretched so far.

The court would place a great burden on the citizens of California by going against precedent. The Circle Inn is Mr. O’Daniel’s private property. If the court imposes potential liability on him in this case, would citizens be forced to open the doors of their homes whenever a stranger claims that there is an emergency? Criminals would delight in their newfound ability to gain access to businesses and residences by simply demanding to use a phone to “call the police”.

The law has developed sensibly. People are left to decide for themselves whether to help in a dangerous situation. They are not legally required to place themselves in harm’s way.

**Argument for the Plaintiff:** Your honors, the Circle Inn’s bartender had both a moral and a legal duty to allow the use of his establishment’s telephone. The Circle Inn may be privately owned, but it is a business and is open to the public. Anyone in the world is invited to stop by and order a drink or a meal. The Good Samaritan had every right to be there.

We do not argue that the bartender had an obligation to break up the fight or endanger himself in any way. We simply argue he had a responsibility to stand aside and allow a free call on his restaurant’s telephone. Any “burden” on him or on the Circle Inn was incredibly slight. The potential benefits were enormous. The trial court made a mistake in concluding that a person *never* has a duty to help another. Such an interpretation makes for poor public policy.

There is no need to radically change the common law. Residences can be excluded from this ruling. People need not be required to allow telephone-seeking strangers into their homes. This court can simply determine that businesses have a legal duty to allow the placement of emergency calls during normal business hours.

**Holding:** The case was reversed and remanded to trial court.

**Question:** Did the bartender owe a duty?

**Answer:** Yes, the bartender owed a duty to the plaintiff’s decedent to permit the patron from Happy Jack’s to place a call to the police or to place the call himself.

**Question:** What is an argument for imposing this duty?

**Answer:** many people just “don’t want to get involved” and no rule should be adopted which would require a citizen to let a stranger in his house to use the telephone.

# Practice Exam

Matching Questions

Match the following terms with their definitions:

|  |  |
| --- | --- |
| **(3) A.** Statute  **(5)** **B.** Administrative Agencies  **(1)** **C.** Common law  **(2)** **D.** *Stare decisis*  **(4)** **E.** United States Constitution | **1.** Law created by judges.  **2.** Let the decision stand.  **3.** A law passed by Congress or a state legislature.  **4.** The supreme law of the land.  **5.** The IRS; the EPA; the FCC; the SEC. |

True/False Questions

Circle true or false:

**1.** T **F** The idea that current cases must be decided based on earlier cases is called legal positivism.

**2.** **T** F Civil lawsuits are brought to court by the injured party, but criminal cases must be prosecuted by the government.

**3.** T **F** Congress established the federal government by passing a series of statutes.

**4.** T **F** The federal government has three branches: executive, legislative, and administrative.

**5.** **T** F Law is different from morality, but the two are closely linked.

Multiple-Choice Questions

1**.** More U.S. law comes from one country than from any other. Which country?

(a) France

**(b) England**

(c) Germany

(d) Spain

(e) Canada

2.Under the United States Constitution, power that is not expressly given to the federal government is retained by

(a) The courts

(b) The Congress

(c) The Founders

**(d) The states and the people**

(e) International treaty

3**.** Judges use precedent to create what kind of law?

**(a) Common law**

(b) Statutes

(c) National law

(d) Local law

(e) Empirical law

4. If the Congress creates a new statute with the president's support, it must pass the idea by a \_\_\_\_\_\_\_\_\_\_\_\_ majority vote in the House and the Senate. If the president vetoes a proposed statute and the Congress wishes to pass it without his support, the idea must pass by a \_\_\_\_\_\_\_\_\_\_\_\_ majority vote in the House and Senate.

1. simple; simple
2. **simple; two-thirds**
3. simple; three-fourths
4. two-thirds; three-fourths

5. What part of the Constitution addresses most basic liberties?

1. Article I
2. Article II
3. Article III
4. **The Amendments**

Case Questions

**1.** Union organizers at a hospital wanted to distribute leaflets to potential union members, but hospital rules prohibited leafleting in areas of patient care, hallways, cafeterias, and any areas open to the public. The National Labor Relations Board (NLRB) ruled that these restrictions violated the law and ordered the hospital to permit the activities in the cafeteria and coffee shop. The NLRB cannot create common law or statutory law. What kind of law was it creating?

**Answer:** The NLRB is an administrative agency and creates administrative law. Congress created the NLRB to oversee all aspects of federal law regulating labor–management relations. The NLRB frequently makes rulings like the one described here.

**2.** The stock market crash of 1929 and the Great Depression that followed were caused in part because so many investors blindly put their money into stocks they knew nothing about. During the 1920s, it was often impossible for an investor to find out what a corporation was planning to do with its money, who was running the corporation, and many other vital facts. Congress responded by passing the Securities Act of 1933, which required a corporation to divulge more information about itself before it could seek money for a new stock issue. What kind of law did Congress create? Explain the relationship between voters, Congress, and the law.

**Answer:** The Securities Act of 1933 is a statute. A statute is any law passed by a legislative body. Voters elect members of Congress who, at least in theory, respond to demands from the electorate. Congress passes statutes (which are generally signed by the president) and those statutes then govern all of us. We all have a chance to affect the law, and we all are governed by the law.

**3.** **ETHICS:** The greatest of all Chinese lawgivers, Confucius, did not esteem written laws. He believed that good rulers were the best guarantee of justice. Does our legal system rely primarily on the rule of law or the rule of people? Which do you instinctively trust more?

**Answer:** In a sense, legal realists share some ideas with the great Chinese lawgiver. The realists argue that what is written matters far less than who enforces the laws. Confucius also put primary emphasis on having wise leaders. The danger, of course, with relying on a government of people, rather than laws, is that it is difficult to get wise, honest people to lead society and basically impossi­ble to find anyone remotely as good as Confucius.

4.Burglar Bob breaks into Vince Victim's house. Bob steals a flat screen TV and laptop, and does a significant amount of damage to the property before he leaves. Fortunately, Vince has a state of the art security system. It captures excellent images of Bob, who is soon caught by police.

Assume that two legal actions follow, one civil and one criminal. Who will be responsible for bringing the civil case? What will be the outcome if the jury believes that Bob did in fact burgle Vince's house? Who will be responsible for bringing the criminal case? What will be the outcome this time if the jury believes that Bob did in fact burgle Vince's house?

**Answer:** The civil case will be brought by Victim, and the outcome of a successful case against Bob would be some type of monetary award such as restitution. The criminal case will be brought by state prosecutors and the outcome would be imprisonment for Bob.

5. *Kuehn v. Pub Zone* and *Soldano v. O'Daniels* both involve attacks in a bar. Should they come out in the same way? If so, which way – in favor of the injured plaintiffs or owner-defendants? Or, should they have different outcomes? What are the key facts that lead you to believe as you do?

**Answer**: Answers will vary.

Discussion Questions

1. Do you believe that there are too many lawsuits in the United States? If so, do you place more blame for the problem on lawyers or on individuals who go to court? Is there anything that would help the problem, or will we always have large numbers of lawsuits?

Answer: Answers will vary.

2. In the 1980s, the Supreme Court ruled that it is legal for protesters to burn the American flag. This activity counts as free speech under the Constitution. If the Court hears a new flag burning case in this decade, should it consider changing its ruling, or should it follow precedent? Is following past precedent something that seems sensible to you: always, usually, sometimes, rarely, or never?

Answer: Answers will vary.

3. When should a business be held legally responsible for customer safety? Consider the following statements, and circle your opinion:

a. A business should keep customers safe from its own employees.

strongly agree agree neutral disagree strongly disagree

b. A business should keep customers safe from other customers.

strongly agree agree neutral disagree strongly disagree

c. A business should keep customers safe from themselves. (Example: an intoxicated

customer who can no longer walk straight.)

strongly agree agree neutral disagree strongly disagree

d. A business should keep people outside its own establishment safe if it is reasonable to do so.

strongly agree agree neutral disagree strongly disagree

Answer: Answers will vary.

4. In his most famous novel, *The Red and the Black*, the French author Stendhal (1783–1842) wrote: “Prior to laws, what is natural is only the strength of the lion, or the need of the creature suffering from hunger or cold, in short, need.” Do you agree with Stendhal? Without laws, would society quickly crumble?

Answer: Answers will vary.

5. Should judges ignore their life experiences, political leanings, and feelings when making judicial decisions? Do you think it is possible?

Answer: Answers will vary.

1. 364 N.J.Super.301, 835 A.2d 692 Superior Court of New Jersey, Appellate Division, 2003 [↑](#footnote-ref-1)
2. 141 Cal. App. 3d 443, Court of Appeal of California, 5th Appellate District, 1983. [↑](#footnote-ref-2)