

BUSINESS LAW I
CHAPTER 2
COURTS AND ALTERNATIVE DISPUTE RESOLUTION

I. **Sources of Law**

- A. Federal and State constitutions,
- B. statutes passed by legislative bodies,
- C. administrative law,
- D. case decisions and
- E. legal principles that form common law.

II. **Judicial Review –**

- A. Essential role of judiciary is to interpret and decide the constitutionality of laws and actions of the other two branches of government.
- B. Judicial review powers are not expressly set out in the U.S. Constitution.
- C. The power was explicitly established in 1803 decision by the Supreme Court in *Marbury v. Madison*, 5 U.S. (Cranch) 137, 2 L.Ed. 60 (1803).

III. **Preliminary Considerations**

- A. **Jurisdiction** –before a case may be heard, the court must have authority over all elements of the suit
 - 1. “in personam” jurisdiction (personal jurisdiction) over any person or business residing in a particular geographic area.
 - a. Corporations are considered persons, therefore, the same principles apply
 - b. **Long arm statute** – a court can exercise personal jurisdiction over certain out of state defendants based on activities that took place in that state. This is called “minimum contacts” which is used to justify the jurisdiction. Minimum contacts means that the defendant must have sufficient connection to the state so that it is fair for the state to exercise power over the defendant.
 - 2. jurisdiction over property located within its boundaries. This is called “**in rem jurisdiction**”.
 - 3. **Jurisdiction over subject matter** – Not all Courts can hear all matters.
 - a. **General Jurisdiction** – county, district, superior, or circuit courts. They have jurisdiction over numerous subject matters, including civil and criminal matters and some may also hear appeals from limited jurisdiction courts.

- b. **Limited Jurisdiction** - These include municipal courts (traffic and drugs) and domestic relations courts (divorce and child-custody). Probate and Bankruptcy courts. **Small Claims**.
- c. **Appellate Courts** – Courts of Appeal generally do not conduct new trials. Usually a panel of 3 or 4 judges who review the record (transcript) to determine whether the trial court erred. **Highest State Court** – Sometimes called the Court of Appeals, Supreme Judicial Court or Supreme Court of Appeals. Decisions made in these courts on questions of law are final.
- d. **Federal Court Jurisdiction:**
 - i. Federal Question – Article III of the U.S. Constitution established boundaries for federal judicial power. Section 2 states that “the judicial power shall extend to all cases, in law and Equity, arising under the Constitution, the Laws of the US and Treaties made, or which shall be made under their Authority.”
 - ii. **Diversity of Citizenship**
 - 1) The plaintiff and defendant must be residents of different states.
 - 2) The dollar amount in controversy must exceed \$75,000.
 - iii. **FEDERAL COURT SYSTEM**
 - 1) Federal Court judges are appointed by the President and subject to confirmation by the U.S. Senate -- all federal judges receive lifetime appointment under Article III of the Constitution.
 - 2) **U.S. DISTRICT COURTS** - These courts are equivalent of state trial courts, they have original jurisdiction in matters involving a federal question and concurrent jurisdiction w/state courts when diversity jurisdiction exists
 - 3) **U.S. COURTS OF APPEALS** - There are thirteen (13) COAs and U.S. District Courts of Appeals (12 across the country and one in the District of Columbia) *See* exhibit 2-3 pg. 40. The 12 hear appeals from the federal district courts located within their respective judicial circuits or geographic boundaries. The COAs for the Thirteenth Circuit called the Federal Circuit has national appellate jurisdiction over certain cases such as, patent law and when the government is the defendant.
 - 4) **U.S. SUPREME COURT** - This court consists of 9 Justices. The court has original or trial jurisdiction rarely most of its work is in appeals cases. The Supreme Court can review any case decided by any of the federal courts of appeals.

a) Cases are brought to the Supreme Court via a Writ of Certiorari which is an order issued by the court to a lower court to send it the record of the case for review. A writ is not issued unless, at least, 4 of the 9 justices approve. This is called the Rule of Four.

B. **Venue** – this is most concerned with the most appropriate location for a trial. Venue reflects that a court trying a case should be in the geographic neighborhood where the incident occurred or where the parties reside. Things such as publicity may require that venue should be in another location

C. **Standing to Sue** – Prior to bringing a suit, parties must have “standing” which means having a sufficient stake in a matter to justify them seeking relief through the courts. Standing can be broken into 3 elements:

1. **Harm.** The party bringing the action must have suffered or will imminently suffer harm (an invasion of a legally protected interest).
2. **Causation.** There must be a casual connection between the conduct complained of and the injury.
3. **Remedy.** It must be likely, as opposed to speculative, that a favorable court decision will remedy, or make up for, the injury suffered.

D. **Focus of Review**

1. **Question of Fact** – what really happened?
2. **Question of Law** – concerns the application or interpretation of the law. Only judges, not a jury, can rule on questions of law.

IV. ALTERNATIVE DISPUTE RESOLUTION (ADR)

A. **LITIGATION** – the process of resolving a dispute through the court system – this is expensive and time consuming.

B. **ADR** is flexible and the parties can control how they will attempt to settle their dispute.

1. Negotiation is the simplest form of ADR which is where the parties settle their suit informally with or without attorneys.
2. **MEDIATION** –
 - a. neutral third party who
 - b. works with both sides
 - c. to facilitate a resolution.
 - d. The Mediator proposes solutions but does not make the ultimate decision.
3. **ARBITRATION**
 - a. more formal method of ADR
 - b. an arbitrator (a neutral party or panel of experts)
 - c. hears a dispute and

- d. imposes a resolution on the parties. The arbitrator makes the decision.
 - e. The decision can be binding or non-binding – the parties decide on this prior to entering into the process.
 - f. The decision is referred to as an “award.”
 - g. Court can set aside an award for one of the following reasons:
 - i. The arbitrator’s conduct or “bad faith” substantially prejudiced the rights of one of the parties.
 - ii. The award violates an established public policy.
 - iii. The arbitrator exceeded his/her powers – issues that were not agreed to be arbitrated, are actually arbitrated.
 - h. **ARBITRATION CLAUSES** – usually found in credit card terms.
4. **Neutral Case Evaluation** – a third party is selected, the parties explain what their issues are, the case Evaluator assesses the strengths and weaknesses of the parties’ respective claims.
5. **Summary Jury Trials** – Parties present their arguments to a jury, and the jury renders a verdict. The verdict is not binding rather, it acts as a guide for both parties.