CONSTITUTIONAL LAW

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CONSTITUTIONAL LAW

PART 1: POWERS OF THE FEDERAL GOVERNMENT

I. THE JUDICIAL POWER

A. ARTICLE III

Federal judicial power extends to cases involving:

1. ***Interpretation*** of the Constitution, federal laws, treaties, and admiralty and maritime laws; and

2. ***Disputes*** between states, states and foreign citizens, and citizens of diverse citizenship.

B. POWER OF JUDICIAL REVIEW

The Supreme Court may review the constitutionality of acts of other branches of the federal government. It may also review state acts pursuant to the Supremacy Clause.

C. FEDERAL COURTS

Only Article III courts (*i.e.,* courts established by Congress pursuant to Article III) are the subject of this outline. Congress has plenary power to delineate the original and appellate jurisdiction of these courts but is bound by the standards set forth in Article III as to subject matter and party jurisdiction and the requirement of a "case or controversy." Congress can also create courts under Article I (*e.g.,* tax courts). Judges in those courts do not have life tenure as do Article III judges, and Congress may not assign to Article I courts jurisdiction over cases that have traditionally been tried in Article III courts.

D. JURISDICTION OF THE SUPREME COURT

1. Original Jurisdiction

The Supreme Court has original jurisdiction in all cases affecting ambassadors, public ministers, consuls, and those in which a state is a party, but Congress has given concurrent jurisdiction to lower federal courts in all cases except those between states.

2. Appellate Jurisdiction

The Supreme Court has appellate jurisdiction in all cases to which federal power extends, subject to congressional exceptions and regulation. Cases can come to the Court by one of two ways:

a. Writ of Certiorari—Most Cases

The Supreme Court has complete ***discretion*** to hear cases that come to it by certiorari. The cases that come by certiorari are:

1) Cases from ***state courts*** where (i) the constitutionality of a federal statute, federal treaty, or state statute is in issue, or (ii) a state statute allegedly violates federal law.

2) All cases from ***federal courts*** of appeals.

b. Appeal—Rare Cases

The Supreme Court ***must*** hear cases that come to it by appeal. These cases are confined to decisions by three-judge federal district court panels that grant or deny injunctive relief.

E. CONSTITUTIONAL AND SELF-IMPOSED LIMITATIONS ON EXERCISE OF FEDERAL JURISDICTION—"STRICT NECESSITY"

Whether a case is "justiciable" (*i.e.,* a federal court may address it) depends on whether there is a "case or controversy." In addition to the "case or controversy" requirement, there are other limitations on federal court jurisdiction.

1. No Advisory Opinions

There must be specific ***present harm*** or threat of specific future harm. Federal courts can hear actions for declaratory relief if there is an actual dispute between parties having adverse legal interests. Complainants must show that they have engaged in (or wish to engage in) specific conduct and that the challenged action poses a ***real and immediate danger*** to their interests. However, the federal courts will not determine the constitutionality of a statute if it has never been enforced and there is no real fear that it ever will be.

2. Ripeness—Immediate Threat of Harm

A plaintiff is not entitled to review of a statute or regulation before its enforcement (*i.e.,* may not obtain a declaratory judgment) unless the plaintiff will suffer some harm or immediate threat of harm.

3. Mootness

A real controversy must exist at all stages of review. If the matter has already been resolved, the case will be dismissed as moot.

a. Exception

Controversies capable of repetition, but evading review are not moot. *Examples:* Issues concerning events of short duration (*e.g.,* abortion) or a defendant who voluntarily stops the offending practice but is free to resume.

b. Class Actions

A class representative may continue to pursue a class action after the representative's controversy has become moot if claims of other class members are still viable.

Exam Tip Ripeness bars consideration of claims ***before*** they have been developed; mootness bars their consideration ***after*** they have been resolved.

4. Standing

A person must have a concrete stake in the outcome of a case.

a. Components

1) Injury

Plaintiff must show that she has been or will be ***directly*** and ***personally*** injured by the allegedly unlawful government action, which affects her rights under the Constitution or federal law. The injury ***need not be economic***.

2) Causation

There must be a causal connection between the injury and the conduct complained of.

3) Redressability

A decision in the litigant's favor must be capable of eliminating her grievance.

Exam Tip Remember that standing just allows the plaintiff to get into court. Thus, a successful ruling on the standing issue does not mean that the plaintiff wins his suit; it merely means that he gets an opportunity to try it.

b. Common Standing Issues

1) Congressional Conferral of Standing
Congress has no power to eliminate the case or controversy requirement and, thus, cannot grant standing to someone not having an injury. However, a federal statute may create new interests, injury to which may be sufficient for standing.

2) Standing to Enforce Government Statutes
A plaintiff may have standing to enforce a federal statute if she is within the "***zone of interests***" Congress meant to protect.

3) Standing to Assert Rights of Others
Generally, one cannot assert the constitutional rights of others to obtain standing, but a ***claimant with standing*** in her own right may also assert the rights of a third party ***if***:

a) It is difficult for the third party to assert her own rights (*e.g.,* an association may attack a law requiring disclosure of membership lists, because members cannot attack the law without disclosing their identities); or

b) A special relationship exists between the claimant and the third party (*e.g.,* a doctor can assert a patient's rights in challenging an abortion restriction).

4) Standing of Organizations
An organization has standing if (i) there is an injury in fact to members that gives them a right to sue on their own behalf, (ii) the injury is related to the organization's purpose, ***and*** (iii) individual member participation in the lawsuit is not required.

5) No Citizenship Standing
People have no standing merely as "citizens" to claim that government action violates federal law or the Constitution. The injury is too generalized.

6) Taxpayer Standing Requisites
A taxpayer has standing to litigate her tax bill, but a taxpayer generally has no standing to ***challenge government expenditures***, because the taxpayer's interest is too remote. *Exception:* Suits attacking ***congressional*** taxing and spending measures on First Amendment ***Establishment Clause*** grounds (*e.g.,* congressionally approved federal expenditures to aid parochial schools).

Exam Tip For a taxpayer to have standing, ***Congress's spending power*** must be involved. Thus, for example, there is no standing to challenge federal government grants of surplus property to religious groups or expenditures of general executive branch funds.