

## Chapter 2 and 3: The Court System and Alternate Dispute Resolution

- I. Judiciary's Role in the American Government
  - A. Judicial review: The process by which courts decide on the constitutionality of legislative enactments and actions of the executive branch.
  - B. Marbury v. Madison(1803)
    1. Power of judicial branch became clear.

Summary of Courts Jurisdiction over Person and Property:

Courts have jurisdiction over:

- **Residents:** (in personam jurisdiction) because the individual or business resides in the jurisdictional borders of the court;
- **Non-residents:** (in personam jurisdiction) if the individual or business has minimum contacts with the jurisdictional that justifies long-arm jurisdiction of the court
  - o **OR** (in rem jurisdiction) if the property in dispute is located in the jurisdictional borders of the court (BUT remember courts prefer to have jurisdiction over the people and not the property).

### II. Basic Judicial Requirements

A. Jurisdiction (Three rules) - Power to speak the law.

1. Jurisdiction over the Person (In personam) - makes case fair.

a) Residents of state.

- Have power over residents of that state.
- Cannot trick them into coming to state.

b) Anyone who can be served in state with summons.

- Must be able to save papers while person is in state boundaries.

c) Long-arm jurisdiction.

(1) State law permitting courts to exercise jurisdiction over non-residents of state.

(2) Defendant must have "minimum contacts" with the state.

(a) If the defendant is a person:

- (i) If the person injures someone in the state.
- (ii) If they breach or form a contract in that state.
- (iii) If they come to the state regularly to do business.

(b) If the Defendant is a business:

- (i) If they do business in the state.
- (ii) If they advertise or sell products in the state.
- (iii) Placing goods in the stream of commerce. Expecting purchase by residents of the state.

2. Jurisdiction over the Property (In rem).
  - a) In disputes where property is the subject matter of the controversy.
  - b) Property must be within area in which court sits (court's territorial jurisdiction).
  - c) Allows party to file an action against a nonresident personally in a court that can exercise jurisdiction over the nonresident's property.
3. Subject Matter Jurisdiction.(Limits on types of cases a court can hear)
  - a) General and limited jurisdiction
    - (1) Courts of General jurisdiction
      - Have power to hear many different cases.
      - Example: State or federal trial court.
    - (2) Courts of Limited Jurisdiction
      - Have power over limited amount cases depending on type.
      - Example: Probate court, a court in which decides deposition of person's assets after their death.
    - (3) Subject matter limited by:
      - (a) Subject of lawsuit
      - (b) Sum of controversy
      - (c) Whether the case involves a felony or misdemeanor.
      - (d) Whether the proceeding is a trial or an appeal.
  - b) Dollar Amount: small cases
  - c) Criminal law- seriousness of crime.
    - Limited to some court cases
  - d) Original vs. Appellate Jurisdiction.
    - (1) Original Jurisdiction.
      - (a) Where the trial is taking place. Where the original trial is taking place
      - (b) Normally serves as the trial court.
    - (2) Appellate Jurisdiction.
      - (a) Review what has happened before.
4. Jurisdiction of the Federal Courts.
  - a) Federal Question-
    - (1) Cases dealing with the U.S. Constitution, a treaty, or a federal law.
  - b) Diversity of Citizenship.
    - (1) Arises between: Citizen of different states  
**AND**
    - (2) Amount in controversy must exceed \$75,000.
    - (3) Corporation is a citizen of the state where it is incorporated and of the state in which its principal place of business is located.(Where incorporated and main office is)

- (4) Will follow federal laws and appropriate state law.
- 5. Concurrent vs. Exclusive Jurisdiction.
  - a) Concurrent Jurisdiction-
    - (1) When both federal and state court has jurisdiction and power.
  - b) Exclusive Jurisdiction- When only federal or state court has jurisdiction power.
    - (1) Federal: Bankruptcy, patent, copyrights, lawsuits against U.S.
    - (2) State: Divorce and adoption.
- 6. Jurisdiction in Cyberspace
  - a) The "Sliding Scale" Standard- courts have identified three types of Internet business contacts:
    - (1) Substantial business conducted over the internet.
    - (2) Some interactivity through a website;
    - (3) Passive advertising. If people have to voluntarily access it or if the advertising is sent to specific people, it is considered active.
- B. Venue: Geographic location most appropriate for the trial.
  - 1. General Rule: Where the defendant resides or where the cause of action occurred. (State/county) resides OR c/a occurred.
  - 2. Court can still hear case even if venue not proper there.
  - 3. Incumbent on the parties to request a change of venue.
  - 4. Court can change venue for:
    - a) In the interest of justice, making it more fair
    - b) For the convenience of the parties.
- C. Standing(!!) Focus solely on plaintiff(if they can't prove standing then it is thrown out)
  - 1. To have standing to sue, one must have a sufficient "stake" in a controversy to seek judicial resolution.
    - a) Must have legally protected and tangible interest at stake (stake in the outcome).
    - b) Must have been injured or have been threatened with injury by the action (justiciable controversy). *Harm*
    - c) There must be a causal connection between the conduct complained and the injury. *Causation*
    - d) It must be likely that a court decision or remedy will make up for the injury suffered. *Remedy*
  - 2. Must have a "justiciable controversy"

### III. State and Federal Court Systems

#### A. State Court Systems

Texas State Court System model: (See Chart in course pack Appendix)

- 1. Trial Courts/Courts of Original Jurisdiction.
  - a) Can have general jurisdiction or limited jurisdiction such as municipal courts.