

## Sec. 2—Judicial Power and Jurisdiction

## Cl. 1—Cases and Controversies

power to assure that the federal courts will not intrude into areas committed to the other branches of government. Justiciability is the term of art employed to give expression to this dual limitation placed upon federal courts by the case and controversy doctrine.”<sup>355</sup> Justice Frankfurter perhaps best captured the flavor of the “case” and “controversy” requirement by noting that it takes the “expert feel of lawyers” often to note it.<sup>356</sup>

From these quotations may be isolated several factors which, in one degree or another, go to make up a “case” and “controversy.”

**Adverse Litigants**

The presence of adverse litigants with real interests to contend for is a standard which has been stressed in numerous cases,<sup>357</sup> and the requirement implicates a number of complementary factors making up a justiciable suit. The requirement was one of the decisive factors, if not the decisive one, in *Muskrat v. United States*,<sup>358</sup> in which the Court struck down a statute authorizing certain named Indians to bring a test suit against the United States to determine the validity of a law affecting the allocation of Indian lands. Attorney’s fees of both sides were to be paid out of tribal funds deposited in the United States Treasury. “The judicial power,” said the Court, “. . . is the right to determine actual controversies arising between adverse litigants, duly instituted in courts of proper jurisdiction. . . . It is true the United States is made a defendant to this action, but it has no interest adverse to the claimants. The object is not to assert a property right as against the government, or to demand compensation for alleged wrongs because of action upon its part. The whole purpose of the law is to determine the constitutional validity of this class of legislation, in a suit not arising between parties concerning a property right necessarily involved in the decision in question, but in a proceeding against the govern-

<sup>355</sup> *Flast v. Cohen*, 392 U.S. 83, 94–95 (1968).

<sup>356</sup> “The jurisdiction of the federal courts can be invoked only under circumstances which to the expert feel of lawyers constitute a ‘case or controversy.’” *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 149, 150 (1951).

<sup>357</sup> *Lord v. Veazie*, 49 U.S. (8 How.) 251 (1850); *Chicago & Grand Trunk Ry. v. Wellman*, 143 U.S. 339 (1892); *South Spring Hill Gold Mining Co. v. Amador Medean Gold Mining Co.*, 145 U.S. 300 (1892); *California v. San Pablo & T.R.R.*, 149 U.S. 308 (1893); *Tregea v. Modesto Irrigation District*, 164 U.S. 179 (1896); *Lampasas v. Bell*, 180 U.S. 276 (1901); *Smith v. Indiana*, 191 U.S. 138 (1903); *Braxton County Court v. West Virginia*, 208 U.S. 192 (1908); *Musktrat v. United States*, 219 U.S. 346 (1911); *United States v. Johnson*, 319 U.S. 302 (1943); *Moore v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 47 (1971).

<sup>358</sup> 219 U.S. 346 (1911).