

## Sec. 2—Judicial Power and Jurisdiction

## Cl. 1—Cases and Controversies

bring a case before it for decision.”<sup>350</sup> The meaning attached to the terms “cases” and “controversies”<sup>351</sup> determines therefore the extent of the judicial power as well as the capacity of the federal courts to receive jurisdiction. According to Chief Justice Marshall, judicial power is capable of acting only when the subject is submitted in a case and a case arises only when a party asserts his rights “in a form prescribed by law.”<sup>352</sup> “By cases and controversies are intended the claims of litigants brought before the courts for determination by such regular proceedings as are established by law or custom for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs. Whenever the claim of a party under the Constitution, laws, or treaties of the United States takes such a form that the judicial power is capable of acting upon it, then it has become a case. The term implies the existence of present or possible adverse parties whose contentions are submitted to the Court for adjudication.”<sup>353</sup>

Chief Justice Hughes once essayed a definition, which, however, presents a substantial problem of labels. “A ‘controversy’ in this sense must be one that is appropriate for judicial determination. A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical character; from one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.”<sup>354</sup> Of the “case” and “controversy” requirement, Chief Justice Warren admitted that “those two words have an iceberg quality, containing beneath their surface simplicity submerged complexities which go to the very heart of our constitutional form of government. Embodied in the words ‘cases’ and ‘controversies’ are two complementary but somewhat different limitations. In part those words limit the business of federal courts to questions presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process. And in part those words define the role assigned to the judiciary in a tripartite allocation of

<sup>350</sup> *Muskra v. United States*, 219 U.S. 346, 356 (1911).

<sup>351</sup> The two terms may be used interchangeably, inasmuch as a “controversy,” if distinguishable from a “case” at all, is so only because it is a less comprehensive word and includes only suits of a civil nature. *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 239 (1937).

<sup>352</sup> *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738 (1824).

<sup>353</sup> *In re Pacific Ry. Comm’n*, 32 F. 241, 255 (C.C. Calif. 1887) (Justice Field). See also *Smith v. Adams*, 130 U.S. 167, 173–174 (1889).

<sup>354</sup> *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 229, 240–241 (1937). Cf. *Public Service Comm’n v. Wycoff Co.*, 344 U.S. 237, 242 (1952).