gesting that Congress could not commit the action to an Article I tribunal, save perhaps through the consent of the parties.[84]

Constitutional Status of the Court of Claims and the Courts of Customs and Patent Appeals.—Although the Supreme Court long accepted the Court of Claims as an Article III court,[85] it later ruled that court to be an Article I court and its judges without constitutional protection of tenure and salary.[86] Then, in the 1950s, Congress statutorily declared that the Court of Claims, the Customs Court, and the Court of Customs and Patent Appeals were Article III courts,[87] a questionable act under the standards the Court had used to determine whether courts were legislative or constitutional.[88] In *Glidden Co. v. Zdanok*,[89] however, five of seven participating Justices united to find that indeed the Court of Claims and the Court of Customs and Patent Appeals, at least, were constitutional courts and their judges eligible to participate in judicial business in other constitutional courts. Three Justices would have overruled *Bakelite* and *Williams* and would have held that the courts in question were constitutional courts.[90] Whether a court is an Article III tribunal depends largely upon whether legislation establishing it is in harmony with the limitations of that Article, specifically, "whether . . . its business is the federal business there specified and its judges and judgments are allowed the independence there expressly or impliedly made requisite." When a court is created "to carry into effect [federal] powers . . . over subject matter . . . and

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[84] 492 U.S. at 55–64. The Court reserved the question whether, a jury trial being required, a non-Article III bankruptcy judge could oversee such a jury trial. Id. at 64. That question remains unresolved, both as a matter, first, of whether there is statutory authorization for bankruptcy judges to conduct jury trials, and, second, if there is, whether they may constitutionally do so. *E.g.*, *In re* Ben Cooper, Inc., 896 F.2d 1394 (2d Cir. 1990), *cert. granted*, 497 U.S. 1023, *vacated and remanded for consideration of a jurisdictional issue*, 498 U.S. 964 (1990), *reinstated*, 924 F.2d 36 (2d Cir.), *cert. denied*, 500 U.S. 928 (1991); *In re* Grabill Corp., 967 F.2d 1152 (7th Cir. 1991), *pet. for reh. en banc den.*, 976 F.2d 1126 (7th Cir. 1992).

[85] De Groot v. United States, 72 U.S. (5 Wall.) 419 (1866); United States v. Union Pacific Co., 98 U.S. 569, 603 (1878); Miles v. Graham, 268 U.S. 501 (1925).

[86] Williams v. United States, 289 U.S. 553 (1933); *cf. Ex parte* Bakelite Corp., 279 U.S. 438, 450–455 (1929).

[87] 67 Stat. 226, § 1, 28 U.S.C. § 171 (Court of Claims); 70 Stat. 532. § 1, 28 U.S.C. § 251 (Customs Court); 72 Stat. 848, § 1, 28 U.S.C. § 211 (Court of Customs and Patent Appeals).

[88] In *Ex parte* Bakelite Corp., 279 U.S. 438. 459 (1929), Justice Van Devanter refused to give any weight to the fact that Congress had bestowed life tenure on the judges of the Court of Customs Appeals because that line of thought "mistakenly assumes that whether a court is of one class or the other depends on the intention of Congress, whereas the true test lies in the power under which the court was created and in the jurisdiction conferred."

[89] 370 U.S. 530 (1962).

[90] Glidden Co. v. Zdanok, 370 U.S. 530, 531 (1962) (Justices Harlan, Brennan, and Stewart).