3.2 Standing and Personal Jurisdiction

LEARNING OBJECTIVES

1. Explore the standing requirement.
2. Understand how a court obtains personal jurisdiction over the parties.

Before a case can be litigated, parties have to demonstrate that they meet two pretrial requirements: standing and personal jurisdiction.

Standing is a constitutional requirement. Article III of the Constitution grants the judiciary the power to hear “cases” and “controversies.” This means actual cases and controversies, not merely hypothetical ones. Unlike some other jurisdictions, the standing requirement means that courts are unable to give advisory opinions. Let’s say, for example, Congress is considering whether or not to pass a law and would like to know whether the law is constitutional. Standing prevents this question from being litigated, because it’s not yet an actual case or controversy. Standing, therefore, is a doctrine that limits judicial overreach by circumscribing the types of cases that are litigated in our courts.

To demonstrate standing, a party has to prove first that it has an actual case to proceed. This is a procedural matter, and it requires the case to be brought at the right time. If a case is brought too early, it’s not yet ripe. If it’s brought too late, then the case is moot. For example, assume that a state is debating whether or not to pass a law that would require thirty hours of financial management classes before anyone is allowed to form his or her own company. If an entrepreneur who wishes to form her own company but doesn’t want to take the thirty hours of classes sues the state for an unconstitutional law, that lawsuit would be dismissed for being brought too early—it is not ripe since the law hasn’t been passed yet. Now let’s assume that the law has been passed, and the entrepreneur, who has abandoned her plans and is now working for someone else, sues the state anyway. That lawsuit would also be dismissed since
it is now moot. Even if the entrepreneur won the case and the law was overturned, the remedy would be meaningless to her since she does not plan to take the class anyway.

In addition to being brought at the right time, the case has to be brought by the right person. To show standing, a plaintiff has to demonstrate that he has an actual stake in the litigation, or something of value that would be lost if he loses the case. Of course, if a plaintiff has lost money in a contract dispute or has been injured in a tort case, that is sufficient legal injury.

Let’s say, for example, that your roommate is the victim of Internet fraud when she does not receive the goods that she paid for online. She would rather move on and forget the whole episode, but you are outraged and decide to sue the perpetrator in court. Even if the perpetrator admitted that it committed fraud, you would still lose the case because you’re not the right plaintiff here; your roommate is.

Cases that don’t involve monetary damages are sometimes more difficult to call. For example, what if a constitutional right is at stake? What standing does a citizen have to prove to file a lawsuit? Courts have generally held that merely being a taxpayer does not give standing to challenge government expenditures. So, for example, a citizen cannot sue the government to stop the war in Afghanistan just because he pays his taxes. If taxpayers don’t have standing to challenge government action, then who does?

In 2007 Massachusetts, along with eleven other states, sued the Environmental Protection Agency (EPA) to force the agency to regulate carbon dioxide as a pollutant. For years, the EPA had argued that carbon dioxide is not a pollutant and therefore could not be regulated. In response to the suit, the EPA argued that the states lacked standing since they couldn’t prove they had been harmed by excess carbon dioxide in the air. In a major decision, [1] the Supreme Court ruled that the states had standing because they had suffered environmental degradation as a result of global warming brought about by excess carbon dioxide and that therefore the EPA has jurisdiction over carbon dioxide as a pollutant. This decision, along
with the election of President Obama, led to a major policy reversal at the EPA, which is now aggressively pursuing the regulation of carbon pollution to combat global warming.

Another high-profile case on standing involves the Pledge of Allegiance. In 2000 a California attorney and physician sued the government because his daughter attended a school where the Pledge of Allegiance was recited every morning. The plaintiff, Michael Newdow, claimed that the pledge is unconstitutional under the First Amendment because it contains the words “under God.” In 2002 the Ninth Circuit Court of Appeals agreed with Newdow, ruling that the pledge is indeed unconstitutional. On appeal to the Supreme Court, the Court ducked the question of whether the pledge is unconstitutional. Instead, the Court held that Newdow lacked standing to bring the lawsuit in the first place since he is a noncustodial parent. Only his wife, who had custody of the daughter, could bring the lawsuit.

It’s important to note that standing doesn’t have anything to do with the merits of the case. Being able to prove standing doesn’t mean that you can win the case at hand. It only means that you’ve been able to clear a procedural bar toward proceeding with litigation.

Another procedural bar before a plaintiff can proceed is personal jurisdiction. Personal jurisdiction is different from subject matter jurisdiction, which is the power of a court to hear a case. Personal jurisdiction is the power of a court over specific litigants, and it requires litigants to have some form of minimum contacts with the state where the case is filed. Personal jurisdiction seeks to avoid inconvenient litigation, even if the case has actual merit. If you’ve never been to Nebraska, for example, and don’t have any connections to Nebraska, then you might be very surprised to find that you’re being sued in a Nebraska state court. In addition to that, you’d have to go to Nebraska to answer the lawsuit, hire local lawyers to assist you, and spend a lot of time and money in a state you have nothing to do with.

A court obtains personal jurisdiction over the plaintiff when the plaintiff files its lawsuit. Obtaining personal jurisdiction over the defendant can be a little trickier. Typically, there has
to be some sort of connection between the defendant and the state where the court is located. For example, living in the state would create personal jurisdiction. Residency for purposes of personal jurisdiction is different from residency for other legal requirements such as voting and driving. Even temporary residency, such as a college student studying out of state, creates residency for personal jurisdiction purposes. Moreover, merely being in the state temporarily creates personal jurisdiction. If you’re driving through Nebraska, for example, and you’re speeding on a local highway, Nebraska courts have jurisdiction to hear a speeding ticket issued against you. Owning property in a state also creates jurisdiction. For corporations, courts generally hold that personal jurisdiction is proper in the state of incorporation as well as in any state the corporation does business.

Personal jurisdiction, like standing, is a constitutional requirement. The due process clause of the Fourteenth Amendment requires government processes to be carried out fairly. In 1980, the Supreme Court heard an important case on personal jurisdiction involving a car crash in Oklahoma. The plaintiff purchased the car in New York and filed a lawsuit against the manufacturer (Volkswagen) and the distributor and retailer (car dealer). The distributor and the retailer moved to dismiss the case for lack of personal jurisdiction, arguing that they had no business in Oklahoma, had no employees or property there, and did not target citizens of Oklahoma to purchase vehicles from them in New York. The Supreme Court held in favor of the distributor and car dealer, finding that neither had “purposefully availed” themselves of the privileges that come from doing business in Oklahoma. The Court noted that for personal jurisdiction to attach, “substantial notions of fair play and justice” cannot be offended.

Today, most states have written these concepts into laws known as long-arm statutes. These statutes set forth the procedure by which out-of-state defendants can be required to appear before a local court. The statutes provide for how service of process can occur. Service of process is the process by which any defendant (both local and out-of-state) is
notified that it is being sued. Service of process typically requires a copy of
the summons (notice to appear before a court) to be personally delivered to the defendant or
the defendant’s agent. In the case of companies and other nonhuman entities, service of
process is usually easy since they are required to have a registered agent as part of the
process of forming an organization. Service can be more challenging with an individual, since
some defendants know that litigation can be held up while service is attempted and therefore
choose to avoid being served at all costs. While the best service is personal delivery of the
summons, some states prescribe alternative methods such as leaving a copy with a family
member while also mailing a copy.

The Internet era has raised some interesting personal jurisdiction issues. Does creating a
Web site, for example, subject you to personal jurisdiction in all states where the Web site is
accessible? Courts have ruled that the answer depends on what kind of Web site you have
created. If it is a general informational Web site that describes a product, then there are
insufficient minimum contacts to create personal jurisdiction. If, on the other hand, the Web
site reaches out to specific customers and urges them to make a purchase, either through a
shopping cart function or by calling the seller, then there are minimum contacts to justify
jurisdiction.

**KEY TAKEAWAYS**

Standing is a constitutional requirement that requires a plaintiff prove that he or she is the right
person to bring a lawsuit and that he or she is bringing the lawsuit at the right time. Taxpayers
lack standing to sue the government just by being taxpayers. Legal injury does not have to be
monetary based; environmental harm, for example, may be sufficient to demonstrate standing.
Standing has nothing to do with the merits of the underlying case. Courts must have personal
jurisdiction over a defendant before litigation can proceed. Personal jurisdiction, a constitutional
requirement, requires minimum contacts with the state such that substantial notions of fair play
and justice are not offended. Once personal jurisdiction is established, service of process can
occur, where a copy of the summons is delivered to the defendant. If the defendant lives out of state, a long-arm statute prescribes the method for service to occur. A Web site creates personal jurisdiction in any state where it reaches out for customers through a shopping cart function.

**EXERCISES**

1. When President Obama nominated Hillary Clinton as secretary of state in 2008, several constitutional scholars observed that it may be unconstitutional for her to assume the post due to an often-ignored section of the Constitution. What procedural bar stopped citizens from challenging the nomination?

2. Do you believe the Supreme Court acted properly by finding that states with environmental damage from global warming had standing to challenge the federal government?

3. In the Volkswagen car crash case, the manufacturer (Volkswagen, a German company) and the importer did not contest personal jurisdiction of Oklahoma state courts. Why do you think they submitted to jurisdiction so readily?

4. If a car dealer in a neighboring state runs advertisements in your state claiming that its deals are better than those of in-state dealers, does that out-of-state car dealer create personal jurisdiction in your state?

5. If you sell something on eBay, do you create personal jurisdiction in the buyer’s state? Why or why not?

6. If you commit a tort on the Internet, do you create personal jurisdiction in the victim’s state? For example, if you defamed someone who lives out of state on Facebook, have you created jurisdiction in that foreign state?

