

38 JURISDICTION Case Citations

1. "A void judgment is one that has been procured by extrinsic or collateral fraud or entered by a court that did not have jurisdiction over the subject matter or the parties." *Rook v. Rook*, 233 Va. 92, 95, 353 S.E.2d 756, 758 (1987)
2. A court may not render a judgment which transcends the limits of its authority, and a judgment is void if it is beyond the powers granted to the court by the law of its organization, even where the court has jurisdiction over the parties and the subject matter. Thus, if a court is authorized by statute to entertain jurisdiction in a particular case only, and undertakes to exercise the jurisdiction conferred in a case to which the statute has no application, the judgment rendered is void. The lack of statutory authority to make particular order or a judgment is akin to lack of subject matter jurisdiction and is subject to collateral attack. 46 Am. Jur. 2d, Judgments ¶ 25, pp. 388-89.
3. A void judgment is to be distinguished from an erroneous one, in that the latter is subject only to direct attack. A void judgment is one which, from its inception, was a complete nullity and without legal effect. *Lubben v. Selective Service System*, 453 F.2d 645, 649 (1st Cir. 1972)
4. A judgment rendered by a court without personal jurisdiction over the defendant is void. It is a nullity. [A judgment shown to be void for lack of personal service on the defendant is a nullity.] *Sramek v. Sramek*, 17 Kan. App. 2d 573, 576-77, 840 P.2d 553 (1992), rev. denied 252 Kan. 1093 (1993).
5. "Where there are no depositions, admissions, or affidavits the court has no facts to rely on for a summary determination." *Trinsey v. Pagliaro*, D.C. Pa. 1964, 229 F. Supp. 647.
6. "A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court", *OLD WAYNE MUT. L. ASSOC. v. McDONOUGH*, 204 U. S. 8, 27 S. Ct. 236 (1907).
7. "The law is well-settled that a void order or judgment is void even before reversal", *VALLEY v.*

NORTHERN FIRE & MARINE INS. CO., 254 U.S. 348, 41 S. Ct. 116 (1920)

8. "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities; they are not voidable, but simply void, and this even prior to reversal." WILLIAMSON v. BERRY, 8 HOW. 945, 540 12 L. Ed. 1170, 1189 (1850).

9. "Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but rather should dismiss the action." Melo v. U.S. 505 F.2d 1026.

10. "There is no discretion to ignore lack of jurisdiction." Joyce v. U.S. 474 2D 215.

11. "The burden shifts to the court [or charging entity] to prove jurisdiction." Rosemond v. Lambert, 469 F.2d 416.

12. "Court [or charging entity] must prove on the record, all jurisdiction facts related to the jurisdiction asserted." Latana v. Hopper, 102 F.2d 188; Chicago v. New York 37 F Supp. 150.

13. "The law provides that once State and Federal Jurisdiction has been challenged, it must be proven [by the charging entity]." 100 S. Ct. 2502 (1980).

14. "Jurisdiction can be challenged at any time." Basso v. Utah Power & Light Co. 495 F.2d 906, 910.

15. "Defense of lack of jurisdiction over the subject matter may be raised at any time, even on appeal." Hill Top Developers v. Holiday Pines Service Corp. 478 So. 2d. 368 (Fla 2nd DCA 1985).

16. "Thus, where a judicial tribunal has no jurisdiction of the subject matter on which it assumes to act, its proceedings are absolutely void in the fullest sense of the term." Dillon v. Dillon, 187 P.27.

17. "Once challenged, jurisdiction cannot be assumed, it must be proved to exist." Stuck v.

Medical Examiners 94 Ca 2d 751. 211 P2d 389.

18. "Jurisdiction, once challenged, cannot be assumed and must be decided." *Maine v Thiboutot* 100 S. Ct. 250.

19. "The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings." *Hagens v Lavine* 415 U. S. 533.

20. A judgment obtained without jurisdiction over the defendant is void. *Overby v. Overby* , 457 S.W.2d 851 (Tenn. 1970). Volume 20: Corpus Juris Sec. § 1785.

21. Challenge to court's jurisdiction is raised by motion to dismiss, *Criterion Co. v. State*, 458 So. 2d. 22 (Fla 1st DCA 1984).

22. Since jurisdiction is fundamental, and it is jurisdiction alone that gives a court power to hear, determine, and pronounce judgment on the issues before it, jurisdiction must be continuing in the court throughout the proceedings [meaning at the time charges were lodged], *Re. Cavitt*, 254 P.599

23. Since jurisdiction is fundamental to any valid judicial proceeding, the first question that must be determined by a trial court in any case is that of jurisdiction [of the charging entity], *Dillon v. Dillon*, 187 P.27.

24. "A universal principle as old as the law is that a proceedings of a court [or the charging entity] without jurisdiction are a nullity and its judgment therein without effect either on person or property." *Norwood v. Renfield*, 34 C 329; *Ex parte Giambonini*, 49 P. 732.

25. "Jurisdiction is fundamental and a judgment rendered by a court that does not have jurisdiction to hear [due to lack of jurisdiction of charging entity] is void ab initio." *In Re Application of Wyatt*, 300 P. 132; *Re Cavitt*, 118 P2d 846.

26. "A court has no jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal is its power to act, and a court must

have the authority to decide that question in the first instance." *Rescue Army v. Municipal Court of Los Angeles*, 171 P.2d 8; 331 US 549, 91 L. ed. 1666, 67 S.Ct. 1409.

27. "A departure by a court from those recognized and established requirements of law, however close apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is an excess of jurisdiction." *Wuest v. Wuest*, 127 P.2d 934, 937.

28. "Where a court failed to observe safeguards, it amounts to denial of due process of law, court is deprived of juris." *Merritt v. Hunter*, C.A. Kansas 170 F.2d 739.

29. "The fact that the petitioner was released on a promise to appear before a magistrate for an arraignment, that fact is circumstance to be considered in determining whether in first instance there was a probable cause for the arrest." *Monroe v. Papa*, DC, Ill. 1963, 221 F Supp 685.

30. A motion to set aside a judgment as void for lack of jurisdiction is not subject to the time limitations of Rule 60(b). See *Garcia v. Garcia*, 712 P.2d 288 (Utah 1986).

31. A judgment is void, and therefore subject to relief under Rule 60(b)(4), only if the court that rendered judgment lacked jurisdiction or in circumstances in which the court's action amounts to a plain usurpation of power constituting a violation of due process. *United States v. Boch Oldsmobile, Inc.*, 909 F.2d 657, 661 (1st Cir. 1990)

32. Where Rule 60(b)(4) is properly invoked on the basis that the underlying judgment is void, "relief is not a discretionary matter; it is mandatory." *Orner v. Shalala*, 30 F.3d 1307, 1310 (10th Cir. 1994) (quoting *V.T.A., Inc. v. Airco, Inc.*, 597 F.2d 220, 224 n.8 (10th Cir. 1979)).

33. In order for a judgment to be void, there must be some jurisdictional defect in the court's authority to enter the judgment, either because the court lacks personal jurisdiction or because it lacks jurisdiction over the subject matter of the suit. *Puphal v. Puphal*, 105 Idaho 302, 306, 669 P.2d 191, 195 (1983); *Dragotoiu*, 133

Idaho at 647, 991 P.2d at 379.

34. A void judgment is one that has been procured by extrinsic or collateral fraud or entered by a court that did not have jurisdiction over the subject matter or the parties. *Rook v. Rook*, 233 Va. 92, 95, 353 S.E.2d 756, 758 (1987)

35. "Though not specifically alleged, defendant's challenge to subject matter jurisdiction implicitly raised claim that default judgment against him was void and relief should be granted under FRCP Rule 60(b)(4)." *Honneus v. Donovan*, 93 F.R.D. 433, 436-37 (1982), *aff'd*, 691 F.2d 1 (1st Cir. 1982).

36. "A judgment is void if the court acted in a manner inconsistent with due process. A void judgment is a nullity and may be vacated at any time." 261 Kan. at 862.

37. Although Rule 60(b)(4) is ostensibly subject to the "reasonable" time limit of Rule 60(b), at least one court has held that no time limit applies to a motion under the Rule 60(b)(4) because a void judgment can never acquire validity through laches. See *Crosby v. Bradstreet Co.*, 312 F.2d 483 (2nd Cir.) cert. denied, 373 U.S. 911, 83 S.Ct. 1300, 10 L.Ed.2d 412 (1963) where the court vacated a judgment as void 30 years after entry. See also *Marquette Corp. v. Priester*, 234 F.Supp. 799 (E.D.S.C.1964) where the court expressly held that FRCP Rule 60(b)(4) carries no real time limit.

38. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Ex parte McCardle*, 7 Wall. 506, 514 (1869). "On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes. This question the court is bound to ask and answer for itself, even when not otherwise suggested, and without respect to the relation of the parties to it." *Great Southern Fire Proof Hotel Co. v. Jones*, *supra*, at 453. The requirement that jurisdiction be established as a threshold matter "spring[s] from the nature and limits of the judicial power of the United States" and is "inflexible and without exception." *Mansfield, C. & L. M. R. Co. v. Swan*, 111 U. S. 379, 382 (1884). Cited in *Steel Co. v. Citizens for Better Environment*, 523 US 83 - Supreme Court 1998