Attacking a Void Judgment

A judgment that is "void" may be attacked by motion under rule 60(b), regardless of whether the motion is made within one year or is made later[1], by an independent suit in equity if for some reason the motion under 60(b) would not provide adequate relief[2]; or by denying the validity of the judgment when it is relied on in a subsequent action.

Many decisions characterize a judgment that has been procured by fraud as "void," though more often, such a judgment is characterized as "voidable." The distinction has never been very clear, and the purpose of making it not consistently articulated.

One purpose of the distinction is to give effect to the concept that the person seeking to nullify the judgment should ordinarily do so by going into the court that rendered the judgment rather than attempting to do so in an independent suit. Hence, it has been said that a "void" judgment can be attacked in an independent suit but a "voidable" one must be attacked by a 60(b) type of motion. But if the proposition is accepted that the applicant for relief should always be required to use a 60(b) motion unless it would not provide adequate relief[3], then the distinction is unnecessary.

At any rate, a judgment rendered by a court that lacks jurisdiction is universally characterized as "void."[4] Traditional doctrine had been that such a judgment is a legal nullity. In modern decisions, however, the problem is recognized as being more complicated[5]. That is, there may be situations in which a court, lacking jurisdiction has rendered a judgment that should nevertheless be given effect. In this regard, it is important to distinguish between jurisdiction over the person and jurisdiction over the subject matter.

Jurisdiction over the person may be lacking because the process employed did not give adequate notice to the person against whom judgment was rendered[6], or because that court lacked the required contacts with the case[7], or because, although jurisdiction was secured over a party purporting to represent the person, the representation was fundamentally inadequate[8].

Unless the party somehow learned of the action and made an appearance to contest the exercise of jurisdiction over his person[9], the judgment is void on Due Process grounds in all these circumstances. Many decisions also hold a judgment void where the party obtained actual notice from a court that had sufficient contacts with the case but the process was not in technical compliance with the rules governing mechanics of service[10]. Inasmuch as the party in that situation had actual notice and could have raised his technical objection by special appearance, however, it is not at all clear why the judgment should be treated as void, particularly if the statute of limitations has run on the claim by the time the judgment is attacked.

The problem of lack of subject matter jurisdiction is more complicated. The old vintage rule was that a judgment of a court lacking subject matter jurisdiction was a legal nullity[11]. This rule was subject to various saving qualifications, e.g., that jurisdiction was presumed if the rendering court was one of general jurisdiction, that evidence outside the record was inadmissible to prove lack of jurisdiction, etc. But it had the effect of making
judgments potentially vulnerable if any substantial question of subject matter jurisdiction was presented.

The modern view, not yet fully accepted, takes a different approach, at least where the lack of jurisdiction was not entirely obvious. In this approach the critical questions are, first, whether the party against whom the judgment was rendered had opportunity to do so. The questions present themselves in three contexts: where the question of jurisdiction was actually raised in the original action; where the party charged with the judgment appeared in the action, thereby having an opportunity to challenge jurisdiction, but did not raise the jurisdictional question; and where the judgment was rendered by default.

If the question of jurisdiction was raised and adjudicated in the original action, the modern view is that the judgment is not subject to subsequent attack, on the premise that a court has an auxiliary jurisdiction to determine its jurisdiction[12]. Although some authorities suggest that this rule is inapplicable to courts of limited jurisdiction, there seems no reason why it should not be. An erroneous determination of the jurisdictional question can be remedied by review through appeal or extraordinary writ, and failure to pursue such a remedy should foreclose subsequent disputation of the issue.

If the party charged with the judgment appeared in the action, there is almost equally strong reason for holding that the question of subject matter jurisdiction may not be raised by subsequent attack on the judgment[13]. By hypothesis the party had opportunity to raise the jurisdictional defense. There is little reason for saying it should survive the judgment when defenses on the merits would not. Moreover, the party who obtained the judgment may be assumed to suppose it is valid and justifiably guide his subsequent conduct accordingly. Nevertheless, many authorities still adhere to the view that the jurisdictional question can be subsequently raised, by motion under Rule 60(b) or its analogues, by separate suit in equity, or by attacking the judgment when it is relied upon by an opponent. However, most of the cases in which such an attack has been allowed have involved no intervening reliance interests and either a judgment of a tribunal of limited jurisdiction or grounds of attack having Constitutional implications [14]. Even in these situations the tendency seems to be to sustain the judgment except when its enforcement would affect the government itself or the administration of a scheme of remedies having significance beyond the immediate parties.

When the judgment has been entered by default, the judgment is usually regarded as open to attack if rendered without subject matter jurisdiction. When the default was entered without Constitutionally adequate notice, the judgment is in any event infirm on Due Process grounds [14]. If notice was adequate, however, it can be said that the party had opportunity to raise the question of subject matter jurisdiction and should be foreclosed from subsequent opportunity to do so. On the other hand, default judgments are in any case disfavored [16], the more so if the rendering court apparently lacked the authority it purported to exercise. The better rule would seem to be to hold such a judgment void, except when it has given rise to substantial interests of reliance of which the person against whom it was rendered was aware [17]. Binding the person to the judgment in the latter situation can be justified not so much on a principle of res judicata as upon one of equitable estoppel [18], for a judgment is not the only basis upon which one's rights may be treated as finally concluded.
2. See Sec. 13.15 supra.
3. See Sec. 13.15 at note 2 supra.
5. See Boskey and Brauncher, Jurisdiction and Collateral Attack, 40 Colum. L. Rev. 1006 (1940).
10. See, e.g., Central Operating Co. v. Utility Workers of America, 491 F.2d 245 (4th Cir. 1974).
15. See notes 6-8 supra.
16. See sec. 13.14 text following note 5 supra.
17. See Restatement of Judgments sec. 117.
18. See sec. 11.31 supra.

**RULE 60. RELIEF FROM JUDGMENT OR ORDER**

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; Inadverntence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is
void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., Sec. 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill or review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

FRCP 60

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).

There is only an immaterial procedural difference between the relief sought pursuant to Rule 60(b) and the relief sought in an independent action. Hadden v. Rumsey Prods., 196 F.2d 92 (2d Cir. 1952); 7 Moore's Federal Practice, § 60.38(3) (2d ed. 1971))

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)

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)).

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.

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)

Law Review Articles

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Misc. Cases on Void Judgments

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Latimer v. Latimer, a void divorce
PHYLLIS C. HUDSON v. SC DEPT. OF HIGHWAYS - judgment finding a void judgment itself found void - Rule 54(c) does not result in a void judgment unless the judgment by default was different in kind from or exceeded in amount than that prayed for in the demand for judgment.
Meyer v. Meyer
Hamill v. Bay Bridge

People of Illinois v. Harvey. I read section 2-1401, similar to Rule 60 of the Federal Rules of Civil Procedure (Fed. R. Civ. P. 60), as replacing traditional collateral proceedings as the proper vehicle for attacking void judgments. See Malone v. Cosentino, 99 Ill. 2d 29, 33 (1983) (final judgments can only be attacked on direct appeal, or in one of the traditional collateral proceedings now defined by statute). ... In light of these concerns, I believe the better course of action is simply to recognize that a motion for relief from a void judgment may be brought under section 2-1401 of the Code of Civil Procedure. This clarifies the basis of jurisdiction and provides the procedural mechanism for exercising the principle of law with which every member of this court agrees, i.e., that a motion attacking a void judgment may be brought at any time.

KANSAS ex rel. KOONTZ v. CLUBB. However, when a judgment is attacked under K.S.A. 60-260(b)(4) as being void, there is no question of discretion on the part of the trial court.

MEDINA v. AMERICAN FAMILY MUTUAL - A judgment against an alleged tortfeasor that is void due to lack of personal service cannot be successfully used to collect under the injured party's underinsured motorist coverage when the insurance company has not otherwise submitted to jurisdiction in the case. "a void act cannot be ratified." In re Garcia, 105 B.R. 335 (N.D.Ill. 1989).

A party may attack a void judgment at any time in a motion separate and apart from a section 2-1401 petition. R.W. Sawant, 111 Ill. 2d at 310; City of Chicago v. Fair Employment Practices Comm'n, 65 Ill. 2d 108, 112 (1976); Barnard v. Michael, 392 Ill. 130, 135 (1945); see State Bank v. Thill, 113 Ill. 2d 294, 308-09 (1986); Cavanaugh v. Lansing Municipal Airport, 288 Ill. App. 3d 239, 246 (1997); In re Marriage of Parks, 122 Ill. App. 3d 905, 909 (1984); First Federal Savings & Loan Ass'n v. Brown, 74 Ill. App. 3d 901, 905 (1979).

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.

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)


"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.

"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).

"The law is well-settled that a void order or judgement is void even before reversal", VALLEY v. NORTHERN FIRE & MARINE INS. CO., 254 U.S. 348, 41 S. Ct. 116 (1920)

"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 judgements 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).

"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

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

"The burden shifts to the court to prove jurisdiction." Rosemond v. Lambert, 469 F 2d 416

"Court 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

"The law provides that once State and Federal Jurisdiction has been challenged, it must be proven." 100 S. Ct. 2502 (1980)

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

"Once challenged, jurisdiction cannot be assumed, it must be proved to exist." Stuck v. Medical Examiners 94 Ca 2d 751. 211 P2d 389.

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

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

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 Rule 60(b)(4). Honneus v. Donovan, 93 F.R.D. 433, 436-37 (1982), aff’d, 691 F.2d 1 (1st Cir. 1982).

Kocher v. Dow Chem. Co., 132 F.3d 1225, 1230-31 (8th Cir. 1997) (as long as there is an "arguable basis" for subject matter jurisdiction, a judgment is not void).

Lubben v. Selective Service System, 453 F.2d 645, 649 (1st Cir. 1972) ("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.").

Stoll v. Gottlieb, 305 U.S. 165, 171- 72, 59 S.Ct. 134 (1938) ("Every court in rendering a judgment tacitly, if not expressly, determines its jurisdiction over the parties and the subject matter.");


"Either a judgment is valid or it is void, and the court must act accordingly once the issue is resolved." In re Marriage of Hampshire, 261 Kan. 854, 862, 934 P.2d 58 (1997).

"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.