FROM: J.R.
From several of his emails combined

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http://void-judgments.com/
email: educationcenter2000@cox.net
http://void-judgments.com is an informational website about dismissing/vacating judgments for those who have a default judgment against them
We believe that if you don't know your rights, you don't know your options.

Vacating a Default Judgment (order to show cause)

This guide provides general information for New Yorkers who are facing debt collection lawsuits in the New York City civil courts. It does not apply to courts outside the state of New York. It is not a substitute for obtaining legal advice in your individual case.

What is a judgment?
A judgment is the court's written, final decision in the case. If the judgment is against you, it will state how much money you owe to the plaintiff.

**What is a judgment creditor?**

A "judgment creditor" is a creditor or debt buyer that has obtained a judgment against a defendant.

**What is a default judgment?**

When a defendant fails to appear in court ("defaults") the court will issue a judgment against the defendant. A judgment issued under those circumstances is commonly known as a "default judgment." The court usually awards the plaintiff the amount demanded in the complaint, plus interest and court costs. The court usually does not award attorneys' fees on a default judgment, but it may do so.

**Can you re-open a default judgment?**

Yes. Under certain circumstances, it is possible to vacate (re-open) a default judgment. The court has a special procedure for determining whether to vacate a default judgment. The procedure is relatively simple, and most pro se defendants can navigate it successfully.

**What are the criteria for vacating a default judgment?**

There are two main reasons that a court will vacate a default judgment: (1) excuseable default and (2) lack of personal jurisdiction. These reasons are explained below.

**Excuseable Default**

Excuseable default is the most common reason for vacating a default judgment. It has two parts: (1) a reasonable excuse for missing the original court date; and (2) a meritorious defense (a good defense). There is a time limit for moving to vacate a judgment because of excuseable default -- one year from the date you were served with a copy of the judgment. (If you were never served with a copy of the judgment, your one-year clock has not started.)

Common examples of a reasonable excuse: The most common example of a reasonable excuse is that you did not receive a summons telling you to come to court. Other reasonable excuses are that at the time you received the summons you were out of town, ill, incarcerated, unable to take time off from work, or that you could not answer the summons for some other good reason. You would also have a reasonable excuse if, in response to the summons, you telephoned the attorneys for the plaintiff and they told you not to bother going to court.
Sometimes people do not respond to the summons because they do not understand what it is. This is not normally considered to be a reasonable excuse; however, some judges will accept it.

Common examples of a meritorious defense: A defense is a reason why you don't owe the money, not a reason why you can't pay. For example, if you would like to use the defense of identity theft, you would write: "This is not my debt. I am a victim of identity theft." For a list of possible defenses, see Common Defenses to Debt Collection Lawsuits. If you don't know what else to write, most people can honestly state: "I dispute the amount of the debt." Disputing the amount of the debt, combined with improper service, is a sufficient (and very common) reason for the court to grant an order to show cause.

**Lack of Personal Jurisdiction (improper service)**

The court can also vacate a default judgment if you were not properly served with a summons. Look here for an explanation of New York's rules of service, including some common examples of improper service. There are advantages and disadvantages to trying to vacate a judgment on the grounds of improper service. The main advantage is that there is no time limit for seeking to vacate a judgment on the grounds of lack of jurisdiction. Also, if you seek to vacate a judgment because of improper service, you do not need to cite a meritorious defense (or any defense). The disadvantage of seeking to vacate a judgment on the grounds of improper service is that you have the burden of proving the bad service, which you must do at a special hearing called a "traverse hearing." Proving improper service can be difficult depending on the facts of your case.

**How do you vacate a default judgment?**

First, find out which court issued the judgment. (In a debt collection case, you will most likely need to go to the civil court in the county where you live.) Next, go to the court that issued the judgment and find the civil court clerk's office. There, tell the clerk that you want to file an "Order to Show Cause." The clerk will give you a pre-printed form to fill out. You can look at a copy of the form here. The clerk can also help you to fill out the Order to Show Cause form.

**What should you write on the Order to Show Cause form?**

On the Order to Show Cause form, you need to explain why the court should vacate the judgment. In other words, you have to establish either excuseable default, or lack of jurisdiction, or both. We recommend that you always include on the form (a) the reason why you did not appear in court; and (2) a meritorious defense. If you need help deciding what to write on your Order to Show Cause, please call the NYC Financial Justice Hotline at 212-925-4929.

**Know Your Rights!**
Sometimes, the court clerk will tell you not to say that you did not receive a summons. This "advice" is improper. You have the right to challenge improper service! And, in fact, improper service is often at the root of a default judgment. If you were not properly served, you should always say so in your Order to Show Cause.

**Should you write anything else on your Order to Show Cause?**

If you have a frozen bank account that contains exempt funds, if your wages are being garnished, or if there is some other emergency situation requiring that your judgment be vacated more quickly than usual, you should include this information on your Order to Show Cause.

**What happens after you fill out the Order to Show Cause?**

After you fill out the Order to Show Cause form, it goes to a judge for signature. In Brooklyn (Kings County) you will take it up to the judge yourself. In all other counties, the court staff will take it for you. In both cases, you will have to wait to find out whether the judge signs it.

If the judge signs your Order to Show Cause, you will have to serve it on the attorney for the plaintiff. The court will instruct you on how to serve the papers. The court will also give you a date to come back to court - your "return date." The return date is supposed to be within eight days of your Order to Show Cause, but in some courts you might have to wait two or three weeks for a return date. Therefore, if it is an emergency situation, and you cannot wait two or three weeks to see a judge, you should advise the court of this fact at the time you submit your order to show cause.

If the judge does not sign the Order to Show Cause, then the judgment stays in place. Don't despair! Call the NYC Financial Justice Hotline for advice about what to do next.

**What happens at the return date?**

At the return date, you will most likely find yourself sitting in a courtroom with a number of other people who are in the same position as you. The court clerk will call out your name, and you should answer clearly. The attorney for the plaintiff may call out your name as well. The plaintiff's attorney might consent to your order to show cause or ask whether you want to make a settlement agreement. No matter what the plaintiff’s attorney says to you, it is important that you focus on making sure that the default judgment is vacated. If the plaintiff's attorney does not consent to vacating the judgment, you should ask to go before the judge. When you are before the judge, you must focus on the arguments you made on the Order to Show Cause form. Simply keep repeating (1) your good reason for failing to appear in court; and (2) your defense in the case. As long as you have a reasonable excuse and a meritorious defense, the judge should grant the order to show cause and vacate the judgment against you. If you want to argue lack of jurisdiction because you were not served with a summons, you must ask the judge for a traverse hearing.
What if you have a frozen bank account or wage garnishment?

Once the default judgment is vacated, the plaintiff must release your bank account and cancel the wage garnishment. This is included in the court's order vacating the judgment.

If the judgment is vacated, does that mean the case is over?

Probably not. In most cases, even though the judgment is vacated, you still have to defend the case. That means you have to file an answer and attend at least one additional court date.

More Information

How to Read a Civil Court Summons (PDF)

The Basics of Defending Creditor Lawsuits

Common Defenses to Creditor Lawsuits

Frozen Bank Accounts

What is Exempt from Debt Collection?

Helpful Links and Resources

LawHelp/NY: attorney referrals and information for pro se litigants

New York City Civil Court: information about representing yourself in court, including contact information and court forms

The Legal Aid Society, When The Creditor Sues, What Are My Rights? (PDF)

Disclaimer: This site provides general information for consumers and links to other sources of information. This site does not provide legal advice, which you can only get from an attorney. NEDAP has no control over the information on linked sites.

For More information or to contact a Judgment Defense Specialist Click Here

http://void-judgments.com is an informational website about dismissing/vacating judgments for those who have a default judgment against them

We believe that if you don't know your rights, you don't know your options.
Did a third party debt collector file a judgment against you?

**A word about the courts here in the United States**

We need to understand that we are not in a common-law venue but rather in an admiralty / merchant law venue and, of course, in merchant law, there is another word for defendant and that is **debtor**, which sounds like you have already been convicted.

So the old notion that you are innocent until proven guilty, at least when it comes to admiralty, is certainly not the case.

You're brought into court under a court approach to the whole problem called assumpsit. And a assumpsit is Latin, of course, is where we get our word assumption from, and literally what they're doing is they're presuming that you're guilty, which is not the old I'm innocent until proven guilty routine. And because of that and because you are characterized as the debtor, you are expected to lose. That is what is supposed to happen. The plaintiff is supposed to prevail.

Judgments entered where the court lacked either subject matter or personal jurisdiction, or that were otherwise entered in violation of due process of law, must be set aside.

**What if the claim brought against you is fraudulent?**

What if, in fact, the claim brought by the lawyer who is suing you is a fraudulent claim? And that, I think, is the real issue because, you know, just because the court says the definitive judgment doesn't necessarily make it so.

In other words, NOT every judgment is a valid judgment and, in fact, when it comes to credit card debt and other unsecured debt, virtually every judgment is void. Why is it void? Well, let's take a quick look at a couple of items. The first one, regardless of what state you are in, there is a Code of Civil Procedure. Every state has one, and of course there are federal rules for civil procedure as well.
Well, here's the problem. There's no such thing as evidence without someone to testify; in other words, it's a competent fact witness. Competent what? Competent to testify. What would make someone competent to testify? How about if they have first-hand knowledge? Or another way of putting it is, can someone who does not have first-hand knowledge qualify as a competent witness? The answer is No.

So, let's do a quick review. Normally, if you are going to bring a claim and you're going to say this guy defaulted on his loan with the bank. The first thing you are going to enter into evidence is, where's the contract, where's the note? The note and the contract with your in-ink signature upon it is not optional it must be presented and entered into the record as evidence despite the way the courts handle things today.

Actually, according to evidentiary procedure, it is necessary. In fact, in most states, there's an actual statute in the rules of evidence that states that a copy of the contract is not good enough. It has to be an original. They have to be able to produce an original contract.

Now, there's a second reason why this is important, and that is, let's say you decide before you get into a big court battle you want to settle out of court. You say to the judge, Your Honor, we've negotiated and I've agreed to settle this dispute out of court. My only concern, Your Honor, is that I do not want to have this claim brought up against me again, and so, therefore, Your Honor, I'm sure you agree I am entitled to the note, that is to say the original note, that proves that their claim is true. I'm entitled to getting that note back. Moreover, I'm entitled to have that stamped "Paid in Full" or "Satisfied." Now, once I have the original note back, Your Honor, no one else can come against me on this same claim, and you know what? That's only fair, because if you're going to pay your money, you're entitled to get something back for that money paid. Well, what happens if the bank can't produce the note? The answer is, where the complaining party cannot prove the existence of the note, then there is no note.

To recover on a promissory note, the plaintiff must prove: (1) the existence of the note in question; (2) that the party sued signed the note; (3) that the plaintiff is the owner or holder of the note in due course; and (4) that a certain balance is due and owing on the note. See: Prove existence of the note

The Remedy: Tacit Procuration

The remedy is to challenge the claim by asking some questions and making specific demands to the debt collector.

Tacit procuration is a commercial process.

An appeal is not necessary.

After the debt collector has failed to answer in 10 days, we file our affidavit of acceptance, agreement, and accord. An affidavit is a statement of the truth by you, in this case. What are we saying? We're saying, well, on such and such a date I sent off this tacit procreation with all these questions. He didn't respond, so he's agreed to stipulate all of the charges. And about a day later we file an affidavit of claim of lien.

It goes like this: I conditionally accept your offer to have me answer this question upon proof of claim that you have a valid judgment. Note: every unsecured credit card debt judgment is null and void on its face.

And then we, of course, we outline the fact that there had to be an original contract and note with an ink signature upon it, and there had to be a competent witness with first-hand knowledge.
There's no grounds for sanctions at this point, nor did the debt collector present any evidence or information, about the account, real estate, etc.

Second step that we take, is right along with those answers to interrogatories, we say to the debt collector, "We're ready to settle. We want to settle. We're not interested in fighting you and all these questions aren't really necessary considering the fact that we're ready to settle."

Now, needless to say, as you probably guessed, the settlement is conditional. And the way it goes is this: in the matter of your request for payment, and / or that I produce answers to information on absence, I hereby accept for value your presentment and conditionally agree to settle with you in full. What's the condition? Well, upon proof of claim that you have a lawful judgment that fully complies with all the requirements under the laws of (the state the judgment was given).

Now, you would substitute whatever state you're in, and of course, the United States. Then we went on to say the aforesaid proof required by law is a sufficiency of pleadings and includes the following: an original contract signed by (your name) and a sworn testimony of a competent witness with first-hand knowledge that the individual in law, say John Henry Doe, received consideration from XYZ Bank, which constituted a loan, a bank capitol (money) put at risk by the bank. That's what our condition is.

**You cannot bring a lawsuit unless you have "Sufficiency of Pleadings."**

Now, the reason that we could do that is a phrase that says, the aforesaid proof required by law is a "Sufficiency of Pleadings." You cannot even bring a lawsuit unless you have a sufficiency of pleadings, which is to say that unless you have that contract and unless you have that witness, you shouldn't be bringing a claim.

The fact of the matter is, lawyer's want you to believe that they have a judgment against you, but the truth is you don't lose until you give up.

**Note:** You're either going to try and convince the court to vacate the judgment or you're going to convince the opposing council it's time to pack it in and go find another victim. And that's really what you want to do. If you can do that, the debt collector can decide, that "this matter is satisfied" and we're going to move on. Thank you very much.

**You do not have to appeal fraud**

There is such as a thing as an appeal. Everybody's heard of appealing a decision. But what you don't realize, probably, is that you do not have to appeal fraud. If there's a fraud that's taken place, and if they're defrauding you and using a court and the color of law to make that fraud happen, then do you have, in fact, any obligation? The answer is no, as long as you stay in honor.

**Collecting From an Attorney**

Good luck ever collecting from an attorney. And you know that's instead of waiting for him answer, we're going to go ahead and answer for him. Now here's how it reads, it says, "in pursuance of the biblical exhortation "to agree with an adversary quickly whilst you are in the way with him," which is Matthew 5:25, now listen to this," and considering the issues to be resolved in the above captioned matter, I hereby extend the opportunity for us to agree or disagree.

And since the **proclivity** (see definition below) of an adversary is to avoid answering per Proverbs 29:19, the following questions are answered on your behalf to preclude any
stalemate from arising from your failure to respond, although you may wish to enter specific and
detailed objections in the event we are not of one accord." Then we go ahead and start
answering questions.

For Example: the first question is that on the day of your admission to the bar, you did
execute the attorney’s oath to uphold and support the constitution and laws of the United
States (indiscernible). So we can say, and the laws protects us, if that's supplied. And then
you answer for the attorney and the answer to the question is yes. Another question might be
on such and such date, you sent, using United States mail, a lie in an attempt to collect
money, which is mail fraud. Answer? Yes. So what's that? That's a confession of mail fraud.
We do, in any case, about twenty of these kinds of questions using the tacit procreation
approach, and then at the bottom what we do is explain what’s going to happen. We say,
"Determination / stipulation final." i.e. "This determination becomes final unless specifically
objected to in detail under penalty of perjury within 10 days of receipt."

**The consent judgment**

If you know the law, you can press the matter and actually enforce your will and make sure
it's recorded. What we do as soon as we do that is we start to bill the guy. And basically, it's
a 90 day billing process. So you bill him once per month for three months. We give him ten
more days as a grace period. And at the end of 100 days, guess what we have? We have a
consent judgment. This is something that we do not need a judge to sign. We have a consent
judgment as an operation of law. And we can take that to the bonding company that bonded
this lawyer and virtually every debt collector out there has a bond.

What's a bond? It means that they put up the money and it's held by this third party, this
bonding company, and it's there to take care of any damages that occur in the course of their
doing business. Well guess what? Most folks don't know how to collect on a bond, but
actually it's pretty easy. You can get the guy's bonding company to pay by simply presenting
your consent judgment to them and generally speaking, they will pay.

Now, what if they don't? You have the option of getting the sheriff and having him go collect
for you. And by the way, that's another issue that generally isn't a problem because sheriffs
know and understand it's their duty to go collect for all sorts of people, and it's not that
uncommon that they do it as a matter of course.

**Wage Garnishment**

**Question:** Let's assume you've got an existing wage garnishment. Can you apply this process
to undo that or minimize it or change it in any way?

**Answer:** Yes. Everything really depends on your starting point, on your perspective. The
perspective, frankly, from most of the debt collector law firms involved in debt collection are
frankly fairly unimaginative.

If you can turn the tables on them so that they're jumping to your tune, then you can achieve
the satisfaction you are looking for. Here's how it works. Just not too long ago we had a
client that came to us with a judgment in place and they were threatening him with sanctions
from the court. In fact, they were doing worse than that. They had brought an action of a
motion, and this is from of a judgment they had gotten some months ago, and the motion was
that he be held in contempt of court, which is actually a step up from mere sanctions. And he
came to me saying, what do I do with this? And I said, well, there's a couple of things we can
do, but the most important thing that we want to do is get this lawyer to agree to mark your
judgment as satisfied.
And his basic reaction to that was, pardon me? These guys hate my guts. Why would they ever want to do that when I'm certainly not going to pay them. I said, well, it all comes down to leverage. And the leverage in that particular case was a RICO suit.

What RICO stands for is Racketing Influence Corruption Organization. And RICO is title 42 and believe it or not, folks who are bringing people into court without proof and are claiming to represent XYZ Bank when in fact they don't represent the bank, they are simply representing themselves, they are conspiring and that is racketeering. They are conspiring to defraud you of money. They are using the United States mail, and that's mail fraud. They are bringing a fraud upon the court. And they are generally getting the court to aid and abet. And worse, they are getting the bank to aid and abet their fraud.

So that is definitely racketeering. What we did is we simply actually put together a real racketeering suit, a RICO suit, basically sent it off to the lawyer and we're expecting the lawyer is going to mark that account paid in full, full satisfaction for the following reasons. Number one, lawyers cannot defend themselves in a RICO suit. They have to engage outside council for a RICO suit. You are talking about typically upwards of $40 or $50 grand. That's out of their pocket. And that's whether they win or lose. So right there, that's a heck of a threat.

Secondly, think about it, if they lose a racketeering suit, that means they are convicted of racketeering. Are they going to be lawyers for much longer? No. Not a chance. So they are literally betting their whole career. Is that a smart bet? And the answer, of course, is no.

**Liens**

Now, we've already discussed the leverage you can get with a suit, a RICO suit. Another suit that we have that can be used very effectively is the Fair Debt Collections Practices (FDCPA) suit. That's another kind of leverage. Let's go back for just a moment to the tacit procreation. And let's see how that can be used in connection with a lien. Number one, it's a balancing act.

In other words, currently the scales are out of balance and they're weighing heavily against you because they have a lien against you or they are garnishing your wages or whatever.

What you need to do is think in terms of getting the scales back in balance, and the way you do that is by bringing an action against them. And if you complete your action, as I just suggested, within 100 days. Typically, they are trying to get a judgment against you for say $10,000 or $15,000 or maybe $20,000. What you're doing with the tacit procreation is a treble damages issue so that $20,000 on their side gets outweighed by your $60,000 claim. See what I'm saying?

"Offer plus acceptance equals contract"

**The Offer**

And I want you to remember what I was saying a little while ago, earlier this evening, when I said I conditionally accept your offer to answer this question upon proof of claim you have a valid judgment. Who would ever think that a question about your money, about your bank accounts or whatever, is an offer? How about another one? Somebody writes to you and says, you owe XYZ Bank $10,000. Pay up. And it's from a debt collector. What's that? That's an offer.

**The Acceptance**
Well, the acceptance could be, in the case of tacit procreation, their silence. Silence is acceptance. So in effect, what you're doing is you're putting an offer out to him with a tacit procreation. You're saying look, I think you're guilty of all these crimes by asking me these questions. I am going to answer for you.

**Statement for clarification:** It's offer and then counter offer, and we are turning the tables?

**Answer:** You just brought up an excellent point. In order to have a contract you only need an offer and acceptance. The first point you need note is that the party accepting, doing the acceptance, is the party who gets to dictate the terms.

You walk into any car dealership in this country and what do they constantly do to you? Make us an offer. Make us an offer. It's like a broken record. Why are they saying make us an offer? Because if you're the one that makes the offer, they're the ones that get to be the acceptor and that means they are the ones who get the dictate the terms, you see? So that's a big advantage.

**Question:** Is that why when they make us an offer we have to accept their terms and then make a counteroffer? It goes something like that?

**Answer:** Well now, you just brought up the issue of counteroffer. What we do when a lawyer sends his interrogatories and starts asking all sorts of questions about bank accounts, -- now that is his offer. Instead of accepting his offer and simply answering the questions, we did what is called a counteroffer, which was our conditional acceptance. In other words, we conditionally accept your offer to answer his questions upon proof of claim that you have a valid judgment. So now the ball is back in court.

**The Courtroom is all about Commerce**

What we've been talking about here -- sure we've been talking about lawsuits and what have you, but what we've really been talking about is commerce.

"I conditionally accept your offer to cite me for contempt of court and have me thrown in jail upon proof of claim that I'm doing anything other than exercising my rights to protect my property. Now the ball's back in his court. Go ahead. Prove up your claim. You think you've got me for contempt? Show me. Can you do that? You bet. Why? Because that courtroom is all about commerce. They're there to do business. So are you. Do you have a right to protect your business interests? Absolutely.

So, what are we really talking about? We're talking about gorilla warfare. What is the judge going to do to you? He tried to throw a monkey wrench into the works. He tried to scare you, but you didn't scare. You said, Judge, I conditionally accept your offer to cite me for contempt of court and have me thrown in jail upon proof of claim that I'm doing anything other than exercising my rights to protect my property. Now what's he going to say? That you don't have a right to protect your property? Give me a break. He isn't going to do that. He's going to figure out that you know what you're doing. And he's probably not going to mess around with you.

**Validation**

**Question:** You mentioned validation. What if you send them a request for validation and they send you back partial, like partial validation --

**Answer:** Okay. That's an excellent question. Let's make something clear for everybody here. Because I've gotten this question you wouldn't believe how many times. Typically,
what happens is you send out your request for validation and I've had people come back to me and say, but they responded! They responded! I say, no they didn't. Oh yes they did.

**Question:** That's mail fraud, right? That's mail fraud.

**Answer:** Absolutely it's mail fraud. But how do we know for a fact it's a lie? I'll tell you how. Because you go ask -- do a poll of the collection agents out there and you say to them, do you collect for banks or do you buy up bank debt? And 100% of them will say they buy bank debt. I had a lawyer who was caught with his pants down just a couple of days ago, last week. You know what happened? The lady in Wyoming, the one I was telling you about, she said we've got something really interesting here. She said, well in this guy's answer to us, on the one answer he's claiming to represent the bank and in other answer he's claiming to have bought the debt. She said, isn't that a conflict? I said, yeah. You just caught him dead to rights.

**Question:** Is tacit procuration good for student loans?

**Answer:** Yes. A student loan is typically an unsecured debt. Now, let me just say, in the case of credit card debt, it is not legal for the bank to sell your account. They can't do it. And the reason they can't do it is a credit card account is really a series of offers. Think about it. Because, see, the signature -- when we talk about signatures, it's the signature on the little slip that you sign when you go charging something, see what I'm saying? So it's actually a series of offers and a series of offers cannot be transferred. Can't be done. So could the bank legally sell that? No. They couldn't. So that, in itself, was a crime.

**Definitions and legal terms:**

**Assumpsit** (Latin: “he has undertaken”) In common law, an action to recover damages for breach of contract, especially an implied or quasi contract.

It developed in early English law as a form of recovery for the negligent performance of an undertaking (e.g., failing to protect from damage another's goods in one's care). Eventually, it came to cover broader claims regarding failure to keep a promise. It remains available as a contractual remedy in some U.S. jurisdictions.

**ASSUMPSIT - Various Definitions**

**ASSUMPSIT - An undertaking either express or implied, to perform a parol agreement.**

An express assumpsit is where one undertakes verbally or in writing, not under seal, or by matter of record, to perform an act, or to pay a sum of money to another.

An implied assumpsit is where one has not made any formal promise to do an act or to pay a sum of money to another, but who is presumed from his conduct to have assumed to do what is in point of law just and right; for, 1st, it is to be presumed that no one desires to enrich himself at the expense of another; 2d, it is a rule that he who desires the antecedent, must abide by the consequent; as, if I receive a loaf of bread or a newspaper daily sent to my house without orders, and I use it without objection, I am presumed to have accepted
the terms upon which the person sending it had in contemplation, that I should pay a fair price for it; 3d, it is also a rule that every one is presumed to assent to what is useful to him. See Assent

Remedies, Practice. A form of action which may be defined to be an action for the recovery of damages for the non-performance of, a parol or simple contract; or, in other words, a contract not under seal, nor of record; circumstances which distinguish this remedy from others. This action differs from the action of debt; for, in legal consideration, that is for the recovery of a debt eo nomine, and in numero, and may be upon a deed as well as upon any other contract. If differs from covenant, which, though brought for the recovery of damages, can only be supported upon a contract under seal.

It will be proper to consider this subject with reference,

1, to the contract upon which this action may be sustained;
2, the declaration
3, the plea;
4, the judgment.

Assumpsit lies to recover damages for the breach of all parol or simple contracts, whether written or not written express or implied; for the payment of money, or for the performance or omission of any other act. For example, to recover, money lent, paid, or had and received, to the use of the plaintiff; and in some cases, where money has been received by the defendant, in consequence of some tortious act to the plaintiff's property, the plaintiff may waive the tort, and sue the defendant in assumpsit. It is the proper remedy for work and labor done, and services rendered but such work, labor, or services, must be rendered at the request, express or implied, of the defendant for goods sold and delivered; for a breach of promise of marriage.

Assumpsit lies to recover the purchase money for land sold; and it lies, specially, upon wagers; upon foreign judgments; But it will not lie on a judgment obtained in a sister state. Assumpsit is the proper remedy upon an account stated. It will lie for a corporation. In England it does not lie against a corporation, unless by express authority of some legislative act but in this country it lies against a corporation aggregate, on an express or implied promise, in the same manner as against an individual.

The declaration must invariably disclose the consideration of the contract, the contract itself, and the breach of it; but in a declaration on a negotiable instrument under the statute of
Anne, it is not requisite to, allege any consideration; and on a note expressed to have been given for value received, it is not necessary to aver a special consideration. The gist of this action is the promise, and it must be averred. Damages should be laid in a sufficient amount to cover the real amount of the claim.

The usual plea is non-assumpsit under which the defendant may give in evidence most matters of defense. When there are several defendants they cannot plead the general issue severally; nor the same plea in bar, severally. The plea of not guilty, in an action of assumpsit, is cured by verdict.

by: John Bouvier, Revised Sixth Edition, 1856

Assumpsit

Remedies, Practice., A form of action which may be defined to be an action for the recovery of damages for the non-performance of, a parol or simple contract; or, in other words, a contract not under seal, nor of record; circumstances which distinguish this remedy from others. 7 T. R. 351; 3 Johns. Cas. 60. This action differs from the action of debt; for, in legal consideration, that is for the recovery of a debt eo nomine, and in numero, and may be upon a deed as well as upon any other contract. 1 h. Bl. 554; B. N. P. 167. It differs from covenant, which, though brought for the recovery of damages, can only be supported upon a contract under seal. See Covenant.

2. It will be proper to consider this subject with reference,

1, to the contract upon which this action may be sustained;

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3. – 1. Assumpsit lies to recover damages for the breach of all parol or simple contracts, whether written or not written express or implied; for the payment of money, or for the performance or omission of any other act. For example, to recover, money lent, paid, or had and received, to the use of the plaintiff; and in some cases, where money has been received by the defendant, in consequence of some tortious act to the plaintiff's property, the plaintiff may waive the tort, and sue the defendant in assumpsit. 5 Pick. 285; 1 J. J. Marsh. 543 3 Watts, R. 277; 4 Binn. 374; 3 Dana, R. 552; 1 N. H. Rep. 151; 12 Pick. 120 4 Call. R. 461; 4 Pick. 452. It is the proper remedy for work and labor done, and services rendered 1 Gill, 95; 8 S. & M. 397 2 Gilman, 1 3 Yeates, 250 9 Ala. 788 but such work, labor, or services, must be rendered at the request, express or implied, of the defendant; 2 Rep. Cons. Ct. 848; 1 M'Cord, 22; 20 John. 28 11 Mass. 37; 14 Mass. 176; 5 Monr. 513 1 Murph. 181; for goods sold and delivered; 6 J. J. Marsh. 441; 12 Pick. 120; 3 N. H. Rep. 384; 1 Mis. 430; for a breach of promise of marriage. 3 Mass. 73 2 Overton, 233 2 P. S. R. 80. Assumpsit lies to recover the purchase money for land sold; 14 Johns. R. 210; 14 Johns. R. 162; 20 Johns. R. 838 3 M'Cord, R. 421; and it lies, specially, upon wagers; 2 Chit. PI. 114; feigned issues; 2
4. – 2. The declaration must invariably disclose the consideration of the contract, the contract itself, and the breach of it; Bac. Ab. h. t. F 5 Mass. 98; but in a declaration on a negotiable instrument under the statute of Anne, it is not requisite to, allege any consideration; 2 Leigh, R. 198; and on a note expressed to have been given for value received, it is not necessary to aver a special consideration. 7 Johns. 321. See Mass. 97. The gist of this action is the promise, and it must be averred. 2 Wash. 187 2 N. H. Rep. 289 Hardin, 225. Damages should be laid in a sufficient amount to cover the real amount of the claim. See 4 Pick. 497; 2 Rep. Const. Ct. 339; 4 Munf. 95; 5 Munf. 23; 2 N. H. Rep. 289; 1 Breese, 286; 1 Hall, 201; 4 Johns. 280; 11 S. & R. 27; 5 S. & R. 519 6 Conn. 176; 9 Conn. 508; 1 N. & M. 342; 6 Cowen, 151; 2 Bibb, 429; 3 Caines, 286.

5. – 3. The usual plea is non-assumpsit, (q. v.) under which the defendant may give in evidence most matters of defense. Com. Dig. Pledger, 2 G 1. When there are several defendants they cannot plead the general issue severally; 6 Mass. 444; nor the same plea in bar, severally. 13 Mass. 152. The plea of not guilty, in an action of assumpsit, is cured by verdict. 8 S. & R. 541; 4 Call. 451. See 1 Marsh, 602; 17 Mass. 623. 2 Greenl. 362; Minor, 254 Bouv. Inst. Index, h. t.

6. – 4. Judgment. Void Judgment in Assumpsit. Vide Bac. Ab. h. t.; Com. Dig. Action upon the Case upon Assumpsit; Dane's Ab. Index, h. t.; Viner's Ab. h. t.; 1 Chit. Pl. h. t.; Petersd. h. t.; Lawes Pl. in Assumpsit the various Digests, h. t. Actions; Covenant; Debt; Indebitatus assumpsit; Padum Constitutiae pecuniae.

**pro-cliv·i·ty n. pl. pro-cliv·i·ties**

A natural propensity or inclination; predisposition.

[More Legal Terms](http://void-judgments.com)

**http://void-judgments.com** is an informational website about dismissing/vacating judgments for those who have a default judgment against them

We believe that if you don't know your rights, you don't know your options.
Everything You Always Wanted To Know About Void Judgments But Were Afraid To Ask!

Judgments entered where the court lacked either subject matter or personal jurisdiction, or that were otherwise entered in violation of due process of law, must be set aside.

Subject Matter Jurisdiction Elements:

(1) Jurisdiction over parties

(2) Jurisdiction over subject matter

(3) Jurisdictional power to pronounce particular judgment that was rendered

(4) Lacks inherent power to enter judgment

Personal Jurisdiction Elements:

(Void order may be attacked, either directly or collaterally, at any time)

Entered in violation of due process of law

(2) Order procured by fraud

Case Law

Void judgments are those rendered by a court which lacked jurisdiction, either of the subject matter or the parties, Wahl v. Round Valley Bank 38 Ariz. 411, 300 P. 955 (1931); Tube City Mining & Milling Co. v. Otterson, 16 Ariz. 305, 146 P. 203 (1914); and Milliken v. Meyer, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 2d 278 (1940). A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court, Long v. Shorebank Development Corp., 182 F.3d 548 (C.A. 7 Ill. 1999).

A void judgment is one which, from its inception, was a complete nullity and without legal effect, Lubben v. Selective Service System Local Bd. No. 27, 453 F.2d 645, 14 A.L.R. Fed. 298 (C.A. 1 Mass. 1972). A void judgment is one which from the beginning was complete nullity and without any legal effect, Hobbs v. U.S. Office of Personnel Management, 485 F.Supp. 456 (M.D. Fla. 1980).


Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ.
A void judgment is one which, from its inception, was, was a complete nullity and without legal effect, *Rubin v. Johns*, 109 F.R D. 174 (D. Virgin Islands 1985).

A void judgment is one which, from its inception, is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind the parties or to support a right, of no legal force and effect whatever, and incapable of enforcement in any manner or to any degree – *Loyd v. Director, Dept. of Public Safety*, 480 So. 2d 577 (Ala. Civ. App. 1985).

A judgment shown by evidence to be invalid for want of jurisdiction is a void judgment or at all events has all attributes of a void judgment, *City of Los Angeles v. Morgan*, 234 P.2d 319 (Cal.App. 2 Dist. 1951).

Void judgment which is subject to collateral attack, is simulated judgment devoid of any potency because of jurisdictional defects, *Ward v. Terriere*, 386 P.2d 352 (Colo. 1963).

A void judgment is a simulated judgment devoid of any potency because of jurisdictional defects only, in the court rendering it and defect of jurisdiction may relate to a party or parties, the *subject matter*, the cause of action, the question to be determined, or relief to be granted, *Davidson Chevrolet, Inc. v. City and County of Denver*, 330 P.2d 1116, certiorari denied 79 S.Ct. 609, 359 U.S. 926, 3 L.Ed. 2d 629 (Colo. 1958).

Void judgment is one entered by court without jurisdiction of parties or *subject matter* or that lacks inherent power to make or enter particular order involved and such a judgment may be attacked at any time, either directly or collaterally, *People v. Wade*, 506 N.W.2d 954 (Ill. 1987).

Void judgment may be defined as one in which rendering court lacked *subject matter* jurisdiction, lacked personal jurisdiction or acted in manner inconsistent with due process of law *Eckel v. MacNeal*, 628 N.E. 2d 741 (Ill. App. Dist. 1993).

Void judgment is one entered by court without jurisdiction of parties or *subject matter* or that lacks inherent power to make or enter particular order involved; such judgment may be attacked at any time, either directly or collaterally *People v. Sales*, 551 N.E.2d 1359 (Ill.App. 2 Dist. 1990).

Res judicata consequences will not be applied to a void judgment which is one which, from its inception, is a complete nullity and without legal effect *Allcock v. Allcock* 437 N.E. 2d 392 (Ill. App. 3 Dist. 1982).

Void judgment is one which, from its inception is complete nullity and without legal effect In re Marriage of Parks, 630 N.E. 2d 509 (Ill.App. 5 Dist. 1994).

Void judgment is one entered by court that lacks the inherent power to make or enter the particular order involved, and it may be attacked at any time, either directly or collaterally; such a judgment would be a nullity *People v. Rolland* 581 N.E.2d 907, (Ill.App. 4 Dist. 1991).

Void judgment under federal law is one in which rendering court lacked *subject matter* jurisdiction over dispute or jurisdiction over parties, or acted in manner inconsistent with due process of law or otherwise acted unconstitutionally in entering judgment, U.S.C.A. Const. Amed. 5, *Hays v. Louisiana Dock Co.*, 452 n.e.2D 1383 (Ill. App. 5 Dist. 1983).
Void judgment is one that from its inception is a complete nullity and without legal effect. 

\[ \text{Stidham v. Whelchel, 698 N.E.2d 1152 (Ind. 1998).} \]

Relief from void judgment is available when trial court lacked either personal or subject matter jurisdiction, \[ \text{Dusenberry v. Dusenberry, 625 N.E. 2d 458 (Ind.App. 1 Dist. 1993).} \]

Void judgment has no effect whatsoever and is incapable of confirmation or ratification. \[ \text{Lucas v. Estate of Stavos, 609 N.E. 2d 1114, rehearing denied, and transfer denied (Ind. App. 1 dist. 1993).} \]

Void judgment is one rendered by court which lacked personal or subject matter jurisdiction or acted in manner inconsistent with due process, \[ \text{U.S.C.A. Const. Amends. 5, 14 Matter of Marriage of Hampshire, 869 P.2d 58 (Kan. 1997).} \]

Judgment is void if court that rendered it lacked personal or subject matter jurisdiction; void judgment is nullity and may be vacated at any time, \[ \text{Matter of Marriage of Welliver, 869 P.2d 653 (Kan. 1994).} \]

A void judgment is one rendered by a court which lacked personal or subject matter jurisdiction or acted in a manner inconsistent with due process, \[ \text{In re Estate of Wells, 983 P.2d 279, (Kan. App. 1999).} \]

Void judgment is one rendered in absence of jurisdiction over subject matter or parties, \[ \text{Lange v. Johnson, 204 N.W.2d 205 (Minn. 1973).} \]

A void judgment is one rendered in absence of jurisdiction over subject matter or parties, \[ \text{Mills v. Richardson, 81 S.E. 2d 409, (N.C. 1954).} \]

A void judgment is one which has merely semblance, without some essential element, as when court purporting to render it has no jurisdiction, \[ \text{Henderson v. Henderson, 59 S.E. 2d 227, (N.C. 1950).} \]

Void judgment is one entered by court without jurisdiction to enter such judgment, \[ \text{State v. Blankenship 675 N.E. 2d 1303, (Ohio App. 9 Dist. 1996).} \]

Void judgment, such as may be vacated at any time is one whose invalidity appears n face of judgment roll, \[ \text{Graff v. Kelly, 814 P.2d 489 (Okl. 1991).} \]

A void judgment is one that is void on face of judgment roll, \[ \text{Capital Federal Savings Bank v. Bewley, 795 P.2d 1051 (Okl. 1990).} \]

Where condition of bail bond was that defendant would appear at present term of court, judgment forfeiting bond for defendant’s bail to appear at subsequent term was a void judgment within rule that laches does not run against a void judgment, \[ \text{Com. V. Miller, 150 A.2d 585 (Pa. Super. 1959).} \]

A void judgment is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment, \[ \text{State v. Richie, 20 S.W.3d 624 (Tenn. 2000).} \]
Void judgment is one which shows upon face of record want of jurisdiction in court assuming to render judgment, and want of jurisdiction may be either of person, subject matter generally, particular question to be decided or relief assumed to be given, State ex rel. Dawson v. Bomar, 354 S.W. 2d 763, certiorari denied, (Tenn. 1962).

A void judgment is one which shows upon face of record a want of jurisdiction in court assuming to render the judgment, Underwood v. Brown, 244 S.W. 2d 168 (Tenn. 1951).

A void judgment is one which shows on face of record the want of jurisdiction in court assuming to render judgment, which want of jurisdiction may be either of the person, or of the subject matter generally, or of the particular question attempted to decided or relief assumed to be given, Richardson v. Mitchell, 237 S.W. 2d 577, (Tenn.Ct. App. 1950).

Void judgment is one which has no legal force or effect whatever, it is an absolute nullity, its invalidity may be asserted by any person whose rights are affected at any time and at any place and it need not be attacked directly but may be attacked collaterally whenever and wherever it is interposed, City of Lufkin v. McVicker, 510 S.W. 2d 141 (Tex. Civ. App. – Beaumont 1973).

A void judgment, insofar as it purports to be pronouncement of court, is an absolute nullity, Thompson v. Thompson, 238 S.W.2d 218 (Tex.Civ.App. – Waco 1951).

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A void judgment is one that has been procured by extrinsic or collateral fraud, or entered by court that did to have jurisdiction over subject matter or the parties, Rook v. Rook, 353 S.E. 2d 756,(Va. 1987).

A void judgment is a judgment, decree, or order entered by a court which lacks jurisdiction of the parties or of the subject matter, or which lacks the inherent power to make or enter the particular order involved, State ex rel. Turner v. Briggs, 971 P.2d 581 (Wash. App. Div. 1999).

A void judgment or order is one that is entered by a court lacking jurisdiction over the parties or the subject matter, or lacking the inherent power to enter the particular order or judgment, or where the order was procured by fraud, In re Adoption of E.L., 733 N.E.2d 846, (Ill.App. 1 Dist. 2000).

Void judgments are those rendered by court which lacked jurisdiction, either of subject matter or parties, Cockerham v. Zikratch, 619 P.2d 739 (Ariz. 1980). Void judgments generally fall into two classifications, that is, judgments where there is want of jurisdiction of person or subject matter, and judgments procured through fraud, and such judgments may be attacked directly or collaterally, Irving v. Rodriguez, 169 N.E.2d 145, (Ill.app. 2 Dist. 1960).

Invalidity need to appear on face of judgment alone that judgment or order may be said to be intrinsically void or void on its face, if lack of jurisdiction appears from the record, Crockett Oil Co. v. Effie, 374 S.W.2d 154 ( Mo.App. 1964).

Decision is void on the face of the judgment roll when from four corners of that roll, it may be determined that at least one of three elements of jurisdiction was absent: (1) jurisdiction over parties, (2) jurisdiction over subject matter, or (3) jurisdictional power to pronounce particular judgment that was rendered, B & C Investments, Inc. v. F & M Nat. Bank & Trust, 903 P.2d 339 (Okla. App. Div. 3, 1995). Void order may be attacked, either directly or

Void order which is one entered by court which lacks jurisdiction over parties or subject matter, or lacks inherent power to enter judgment, or order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that party is properly before court, People ex rel. Brzica v. Village of Lake Barrington, 644 N.E.2d 66 (Ill.App. 2 Dist. 1994).

While voidable orders are readily appealable and must be attacked directly, void order may be circumvented by collateral attack or remedied by mandamus, Sanchez v. Hester 911 S.W.2d 173, (Tex.App. – Corpus Christi 1995).


When rule providing for relief from void judgments is applicable, relief is not discretionary matter, but is mandatory, Orner v. Shalala, 30 F.3d 1307, (Colo./st1:State (1994).

Judgments entered where court lacked either subject matter or personal jurisdiction, or that were otherwise entered in violation of due process of law, must be set aside, Jaffe and Asher v. Van Brunt, S.D.N.Y.1994. 158 F.R.D. 278.

COLLATERAL ATTACK - When a separate and new lawsuit is filed to challenge some aspect of an earlier and separate case, it is called a collateral attack on the earlier case. This is different than an appeal, which is a challenge to some aspect of a decision made in the same case.

Example: Sam obtains a divorce in Nevada without properly notifying his wife, Laurie. Laurie files a later lawsuit seeking to set aside the divorce and start the divorce proceedings over. Laurie's case is a collateral attack on the divorce.

The law wants judgments to be final whenever possible, and thus collateral attacks are discouraged. Many are filed, but usually only succeed when an obvious injustice or unconstitutional treatment occurred in the earlier case.

SUBJECT-MATTER JURISDICTION - Subject matter is the cause, the object, the thing in dispute.

The authority of a court to decide a particular type of case is called subject- matter jurisdiction and is set by the federal or state Constitution, or by state statutes.

In order for a court to have subject-matter jurisdiction over a divorce action, at least one spouse must have lived in the county where the court is located for a certain period of time. Some states also require the spouse to have lived within the state for a certain length of time, usually a few months longer than the time in the county. For example, to obtain a divorce in California, a person must have lived in California for at least six months, and in the particular county in which he wants to obtain the divorce for at least three months. In Illinois, a person must have lived in the state for ninety days, in New York and New Jersey, the requirement is one year. In Texas, a person must have lived in the state for six months and in the particular county in which she wants to obtain the divorce for at least ninety days.

It is a fatal objection to the jurisdiction of the court when it has not cognizance of the subject-matter of the action; as, if a cause exclusively of admiralty jurisdiction
were brought in a court of common law, or a criminal proceeding in a court having jurisdiction of civil cases only. In such case, neither a plea to the jurisdiction, nor any other plea would be required to oust the court of jurisdiction. The cause might be dismissed upon motion, by the court, ex officio.

**Cognizance**

Acknowledgment, recognition, or jurisdiction; the assumption of jurisdiction in a case.

**Mandamus** - (man-dame-us) n. Latin for "we order," a writ (more modernly called a "writ of mandate") which orders a public agency or governmental body to perform an act required by law when it has neglected or refused to do so. Examples: After petitions were filed with sufficient valid signatures to qualify a proposition for the ballot, the city refuses to call the election, claiming it has a legal opinion that the proposal is unconstitutional. The backers of the proposition file a petition for a writ ordering the city to hold the election. The court will order a hearing on the writ and afterwards either issue the writ or deny the petition. Or a state agency refuses to release public information, a school district charges fees to a student in violation of state law, or a judge will not permit reporters entry at a public trial. All of these can be subject of petitions for a writ of mandamus.

**Vacate**

v. 1) for a judge to set aside or annul an order or judgment which he/she finds was improper. 2) to move out of real estate and cease occupancy.

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**Twenty Reasons to Vacate a Judgment**

Black’s Law Dictionary, Sixth Edition, page 1574:

Void judgment. One which has has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally. **Reynolds v. Volunteer State Life Ins. Co., Tex.Civ.App., 80 S.W.2d 1087, 1092.** One which from its inception is and forever continues to be absolutely null,
without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any manner or to any degree. Judgment is a "void judgment" if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process. Klugh v. U.S., D.C.S.C., 610 F.Supp. 892, 901.


I can go into void judgments at great length with enough court case cites to make anybody's eyes glaze over but I shall refrain. Let it be said that the really big deal with subject matter jurisdiction is that it can never be presumed, never be waived, and cannot be constructed even by mutual consent of the parties.

Subject matter jurisdiction is two part;

the statutory or common law authority for the court to hear the case

and the appearance and testimony of a competent fact witness, in other words, sufficiency of pleadings.

Subject matter failings are usually the following:


(2) Defective petition filed (same case as above).

(3) Fraud committed in the procurement of jurisdiction, Fredman Brothers Furniture v. Dept. of Revenue, 109 Ill. 2d 202, 486 N.E. 2d 893(1985)

(4) Fraud upon the court, In re Village of Willowbrook, 37 Ill, App. 3d 393(1962)

(5) A judge does not follow statutory procedure, Armstrong v. Obucino, 300 Ill 140, 143 (1921)


A **statutory right** is a right granted to a person by authority of a [statute](http://en.wikipedia.org/wiki/Due_process). Statutes are created by [legislative](http://en.wikipedia.org/wiki/Due_process) (and in certain countries executive) bodies, and form the codified law of a [jurisdiction](http://en.wikipedia.org/wiki/Due_process). For example, a statute governing court process might contain provisions giving an election on either party to an appeal, and that right to appeal would be considered statutory.

**Due process**

http://en.wikipedia.org/wiki/Due_process


(10) Where a complaint states no cognizable cause of action against that party, Charles v. Gore, 248 Ill App. 3d 441, 618 N.E. 2d 554 (1st. Dist. 1993)

(11) where any litigant was represented before a court by a person/law firm that is prohibited by law to practice law in that jurisdiction.

(12) When the judge is involved in a scheme of bribery (the Alemann cases, Bracey v Warden, U.S. Supreme Court No. 96-6133(June 9, 1997)

(13) Where a summons was not properly issued.

(14) Where service of process was not made pursuant to statute and Supreme Court Rules, Janove v. Bacon, 6 Ill. 2d 245, 249, 218 N.E. 2d 706, 708 (1953)

(15) when the rules of the Circuit court are not complied with.
when the local rules of the special court are not complied with. (One Where the judge does not act impartially, Bracey v. Warden, U.S. Supreme Court No. 96-6133 (June 9, 1997)

where the statute is vague, People v. Williams, 638 N.E. 2d 207 (1st Dist. (1994)

when proper notice is not given to all parties by the movant, Wilson v. Moore, 13 Ill. App. 3d 632, 301 N.E. 2d 39 (1st Dist. (1973)

where an order/judgment is based on a void order/judgment, Austin v. Smith, 312 F. 2d 337, 343 (1962); English v. English, 72 Ill. App. 3d 736, 393 N.E. 2d 18 (1st Dist. 1979) or

where the public policy of the State of Illinois is violated, Martin-Tregona v Roderick, 29 Ill. App. 3d 553, 331 N.E. 2d 100 (1st Dist. 1975)

And another that can and should be checked on is does the judge have a copy of his oath of office on file in his chambers? If not, he is not a judge and yes, you can go into his office and demand to see a copy of his oath of office at any time. The laws covering judges and other public officials are to be found at 5 U.S.C. 3331, 28 U.S.C. 543 and 5 U.S.C. 1983 and if the judge has not complied with all of those provisions he is not a judge but a trespasser upon the court. If he is proven a trespasser upon the court (upon the law) not one of his judgments, pronouncements or orders are valid. All are null and void.

In all, there are 20 indices which tell us whether or not a court had subject matter jurisdiction and when examining a judgment one has to know each and every one of them by heart. If he knows them by heart he can go through a judgment like Sherman going through Georgia and point out all of the errors which might make the case a void judgment, null and void upon its face.

Sufficiency of Pleadings: (Cross-appeals)

A party challenging an ALJ's decision must do more than recite evidence favorable to its case, the party must demonstrate with some degree of specificity the manner in which substantial evidence does not exist or why the decision is contrary to law. Cox v. Benefits Review Board, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986).

A party may not attack a decision with a view toward enlarging his or her own rights or lessening the rights of an adversary absent a cross-
appeal. However, a cross-appeal is unnecessary when a prevailing party merely advances an argument that would provide another avenue by which the fact finder could reach the same favorable judgment. *Hansen v. Director, OWCP, No. 91-9559 (10th Cir. Jan. 20, 1993).*

An appellee need not cross-appeal in order to make an argument that supports the decision reached by the alj but attacks the reasoning used by the alj in reaching his decision. *Malcomb v. Island Creek Coal Co., 15 F.3d 364, 18 BLR 2-113 (4th Cir. 1994).*

**Jurisdiction**

In *law, jurisdiction* (from the Latin *ius, iuris* meaning "law" and *dicere* meaning "to speak") is the practical *authority* granted to a formally constituted *legal* body or to a *political leader* to deal with and make pronouncements on legal matters and, by implication, to administer *justice* within a defined area of responsibility.

As a topic, jurisdiction draws its substance from *Public International Law, Conflict of Laws, Constitutional Law* and the powers of the *executive* and *legislative* branches of *government* to allocate resources to best serve the needs of its native *society*.

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Why People Lose in Summary Judgments in Court

you can have the judge stamp a "void" on that judgment!


Why People Lose in Summary Judgments in Court
The reason why most people lose in summary/default judgments...

Suddenly the opposition files for summary judgment and you have a hearing before the judge. You argue your case in written and oral arguments. The judge proceeds to ignore all your citations of law and all your arguments. He rules against you and dismisses your case. So what is it that allows the judge to ignore your arguments and make nonsensical rulings?

Before I answer that let me give you two examples of judge’s statements from the bench that we have on the record.

In both cases, the judges refused to tell the plaintiffs why they made their rulings. One judge said that plaintiffs must take it to Appeals and let Appeals tell plaintiffs why the judge dismissed their case! So now we are informed of two things. First, there is a secret court ruling or procedure that the judges are colluding in and they do NOT want you to know what it is. Second, the judge is stating that the Appeals Court judges also know what that secret ruling or procedure is. Amazing, utterly amazing!

Secret Agenda

Now I will tell you what that secret agenda is. There are a number of high court rulings that state that the court cannot decide on the basis of argumentation and must decide on facts presented to the court by a competent witness. You however did not raise your hand and testify at your hearing. You even failed to present any witnesses because you thought you were testifying when you were giving oral arguments!!! You actually did not raise your hand and swear to give testimony.

You could have presented your testimony before you went to hearing by filing an affidavit sworn by you or any other competent witnesses, but you failed to do that.
also. You could have presented a court deposition as testimony. But you didn’t. Oh my, no wonder you got clobbered! But WAIT, there is one more thing that you probably failed to do and now I’ll explain that.

The last thing that you probably failed to do was to enter your evidence by means of a competent witness. Remember the famous “voter punch cards” that were brought into the court to show the election was flawed? The judge never even looked at them and threw Al Gore’s lawyers out of court. The press was upset over this and no one knew why! THIS IS WHY… The boxes of punched cards were never presented to the court by a competent witness. There had to be a witness to state that the cards came from such and such precinct and that they witnessed the cards being gathered up and boxed and transported and they could testify to all such matters. Without the witness, how would the judge know if there had not been tampering with the cards during the gathering and transporting of them? Lawyers cannot be witnesses in the case nor can any statements be made by them that could be considered testimony. So much for high priced lawyers!

One more thing that will be helpful to you in your court filings is this. The opposition will Answer some of your paragraphs with a statement like this: Plaintiff failed to state a claim on which relief can be granted. Court rules state that you have three options to answer: Deny, Admit, or state that not enough information is given to make a determination as to the statement. Just use the last option and let the attorney explain in court what he meant.

One more caution

Some have been arguing that if an attorney makes a statement or statements in court that you should object because the attorney cannot give testimony. Bologna! The attorney is not giving testimony because he is not sworn under oath. His statements are mere argumentation and he has a right to make his arguments.

His client is the one who gives testimony under oath and the attorney never does. Don’t put yourself into a foolish situation like that!

Now that you know their secret agenda you can go into court and win.

For More information or to contact a Judgment Defense Specialist CLICK HERE

Information here provided by:

educationcenter2000.com
http://educationcenter2000.com

Our mission is to educate consumers about secured and unsecured credit and options available to them.
We believe that if you don't know your rights, you don't know your options.

Join Us Today, We have been successfully helping consumers with Debt Resolution and Credit Repair more than 10 years.

Bank Fraud Victim Center

Are you a victim of Predatory Lending or Mortgage broker Fraud?...

- Are you unable to Refinance your Mortgage?
- Did you get an inflated appraisal? See This
- Were you charged single premium insurance?
- Were you charged High Fees?
- Are you being locked in by Prepayment Penalties?
- Were you charged Yield-Spread Premium?
- Did your mortgage note get securitized? (if it did it is worthless and uncollectable) See This

There are many different ways that banks, lenders and brokers can trick homeowners into giving up their homes.

There is a legal remedy to recover Truth In Lending Act violation fines, void the lenders security interest in the property and collect money damages.

You may be a victim of Predatory Lending Practices...Find out more about how your Broker or Lender may have violated the Truth in Lending Act and other consumer protection laws...Click on this link: http://mortgage-home-loan-bank-fraud.com/report.html

Have you ever thought of challenging the lending process as a scam?

Is your Bank or Mortgage Lender Foreclosing? You may be a Victim of Predatory Lending Foreclosure Click Here

The Enormous Clouded Title Problem

For a free preliminary consultation CLICK HERE
Our mission is to educate homeowners about predatory lending practices and bank fraud and the legal options available to them. We believe that if you don't know your rights, you don’t know your options.

We are not a mortgage elimination company. We help homeowners who are victims of predatory lending and bank fraud.

We are the leaders in document auditing and predatory lending litigation and defense. And an authority on the subject of predatory lending practices, foreclosure defense, consumer protection and debtor’s rights.

We are affiliated with attorneys all over the United States.

The information here is presented by:

**The Bank Fraud Victim Center**


Our mission is to educate consumers about secured and unsecured credit and options available to them.

We believe that if you don't know your rights, you don’t know your options.


**http://stopforeclosurestop.com**

**Are you a victim of a Predatory Lending Mortgage Foreclosure? You Can Stop Foreclosure now!**

Help is available to borrowers who have claims against their lenders for violating the Truth in Lending Act and other laws regulating credit transactions.

Such violations may be a defense to a mortgage foreclosure. If there is a violation, you may be able to void the mortgage and apply 100% of your payments to principal. You may also be able to recover money damages.
If the answer to any of the following questions is "yes," please arrange for a professional
auditor to review your loan documents (including demand and collection letters,
correspondence, and any account histories or monthly statements).

- Have you repeatedly refinanced your loan? Was the last refinance within the last
  3 years? (A common predatory practice is "flipping," which involves "repeatedly
  refinancing a mortgage loan without benefit to the borrower, in order to profit
  from high origination fees, closing costs, points, prepayment penalties and other
  charges, steadily eroding the borrower's equity in his or her home.").
- Did you increase rather than lower your rate upon refinancing?
- Are you paying an interest rate in excess of 9.5%?
- Was the loan obtained to pay for home improvement work that was not done
  properly, or even at all?
- Have you had problems with the mortgage company regarding untimely posting
  of monthly payments? Sudden increases in payments? Adding amounts to your
  balance for insurance, "property preservation," or other "advances"? Does your
  principal balance never seem to go down?
- Were you charged high closing costs (points and fees) on the mortgage?
- Did the terms of the mortgage change to your detriment at the last minute before
  the closing?
- Did the lender pay money to your mortgage broker (look on your HUD-1
  Settlement Statement for a "premium" or POC (paid out of closing) "YSP" or
  "yield spread premium")?
- If you have an adjustable rate mortgage, were any adjustments done improperly?
  Can you even tell if the adjustments were correct or not?
- Does your loan contain a prepayment penalty?
- Do you believe you were treated unfairly by your mortgage company? Has
  correspondence with the mortgage company gone unanswered? (Mortgage
  companies have a statutory obligation to respond to complaints and requests for
  explanations of accounts. Often, they don't. Each failure may entitle you to
  $2,000. If your claim against the mortgage company may exceed the number of
  monthly payments you allegedly missed, the mortgage company may not be able
  to prove that you are in default.)
- Did all collection letters sent to you by debt collectors comply with the Fair Debt
  Collection Practices Act? (Up to $1,000 more if they did not.)
- Did you (or anyone else who has an ownership interest in and lives in the house)
  receive a "notice of right to cancel" that was not completely filled out?
- Did you receive your copy of the loan documents at the closing (as opposed to
  being sent to you later or did the closing agent send you signed copies at all)?
- Did you sign a document at the closing stating that you were not canceling?
- Did the closing occur by mail, or at your home, or in another city?

There is a common assumption (among judges, borrowers, and the public) that mortgage
companies do not desire to foreclose and acquire real estate. This assumption is no longer
well founded.
There are an increasing number of "scavengers" that buy bad debts, including mortgages, for a fraction of face value and attempt to enforce them. Such entities profit by foreclosure. "Mortgage sources confide that some unscrupulous lenders are purposely allowing certain borrowers to fall deeper into a financial hole from which they can’t escape. Why? Because it pushes these consumers into foreclosure, whereupon the lender grabs the house and sells it at a profit." Robert I. Heady, *The People’s Money*, "Foreclosure, You Must Avoid It," South Florida Sun-Sentinel, Feb. 25, 2002. In addition, if the loan is guaranteed (by private mortgage insurance or the government), a mortgage company may find it more profitable to foreclose and make a claim on the guarantee.

By: Kenneth M. DeLashmutt "Predatory Lending Defense Specialist"

### 32 Foreclosure Cases Tossed Out of Court!

Federal Judge Chris Boyko tossed out 32 foreclosure cases in a mass dismissal in Cleveland Ohio today because banks and other lenders failed to file a complete set of documents showing their claims were legitimate. See the full Story: [Cases Tossed Out](#)

See Also:

- [Must See Information About Robo-Signers and More...](#)
- [Fraud Factories](#)
- [Debtors Rights When Victim of Predatory Lending](#)
- [Call To Action For Foreclosure Defense](#)
- [File Quiet Title Action on Foreclosed Homes](#)

[http://stopforeclosuresstop.com](http://stopforeclosuresstop.com) is here to educate consumers and to help victims recover their losses and keep their homes. If you are a victim of bank fraud or predatory lending, it is possible to sue your lender for free clear title and money damages. We show you how to stop foreclosure and sue your lender.

Our mission is to stop foreclosure and sue the lender for FREE clear title and damages money.

It is possible to find out if you have broker fraud and/or TILA violations with a simple 20 minute phone call.
The First to Reveal the Truth About the Default Student Loan

I am the Industry-Insider that Revealed the Truth on How to overcome the Financial Death Traps set up by the student loan industry!

Here’s a behind the scenes, exclusive interview with The Rogue Student Loan Collector where he reveals what REALLY goes on behind the scenes in the student loan industry and Department of Education… (and why he despises the Department of Education and is now committed to helping student loan borrowers, by revealing the institutions sneakiest tricks and biggest secrets…)

A series of interview questions showing real life examples of The Rogue Student loan collector “Getting Over” on the unsuspecting borrowers, raping them with colossal payments on their loans, ripping student loan borrower’s off on settlement by using scare tactics, and hammering borrowers by using the element of mystery (and shows you the truth on how to cancel your default student loan).

With this mind-blowing information from The Rogue Student Loan collector (a Production Manager at a student loan collection agency contracted by the DOE you are going to make the collectors bow down to you. Yes – You’ll really be able to save Hundreds or Thousands of dollars on your student loan debt without ever being tricked or coerced by the collectors when you use the secrets The Rogue Student loan collector is about to give you…

The Real Truth About the Securitized Default Student Loan

According to the Federal Register, student loans are securitized which means that student loans were sold or are pooled with other student loans endorsed into a trust. These trusts are called asset backed securities.
Asset Backed Securities collateralized by student loans ("SLABS") comprise one of the four (along with home equity loans, auto loans and credit card receivables) core asset classes financed through asset-backed securitizations and are a benchmark subsector for most floating rate indices. Federal Family Education Loan Program (FFELP) loans are the most common form of student loans and are guaranteed by the U.S. Department of Education ("DOE") at rates ranging from 95%-98% (if the student loan is serviced by a servicer designated as an "exceptional performer" by the Department Of Education the reimbursement rate was up to 100%). As a result, performance (other than high cohort default rates in the late 1980s) has historically been very good and investors’ rate of return has been excellent. The College Cost Reduction and Access Act became effective on October 1, 2007 and significantly changed the economics for FFELP loans; lender special allowance payments were reduced, the exceptional performer designation was revoked, lender insurance rates were reduced, and the lender paid origination fees were doubled. See: wikipedia

See: Impact of Securitization and securitization-a-primer/

According to SEC rules student loans are supposed to be transferred into a trust; however they never actually deliver the note. If the note is NOT indorsed into the trust the note is void and uncollectable.

So what are they securitizing?

They are securitizing a COPY of that note.

All notes securitized by a transfer of the "borrower's" or grantor is void and uncollectible. Also, securitization of a COPY of the note is a violation of the Uniform Commercial Code Article 9. If the note is not endorsed into the trust the note is void and uncollectable.

Student loan debt collectors violate the Fair Debt collection Practices Act because they threaten to take you to court and they have no intentions of doing so. In some cases this violation is worth $1,000.00 fine.

The Student Loan Contract

Student loans are governed by the United States Office of Education.

Most student loan borrowers will have the original contract in their possession because when they got these loans they got these documents and they faxed a copy on the contract to the loan broker so the company does not have the original. But in the contract it says that they don’t have it (and they know that) and that you agree to the terms and conditions by holding on to the original note

The Administrative Process to Cancel Default Student Loan
I have yet to see where any money was used by the department of education that actually funded any loan and that’s what they say on these loans “your loan was funded by the Department of Education” when it wasn’t. **It was funded by private investors, as a student loan security.**

You may want to call me for more information about wiping out your default student loan.

See letter from Sally Mae showing student loan default removed from credit report by the administrative process. See: [Letter](#)


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**Legal Page**

**STARE DECISIS** - Lat. "to stand by that which is decided." The principal that the precedent decisions are to be followed by the courts.

To abide or adhere to decided cases. It is a general maxim that when a point has been settled by decision, it forms a precedent which is not afterwards to be departed from. The doctrine of stare decisis is not always to be relied upon, for the courts find it necessary to overrule cases which have been hastily decided, or contrary to principle. Many hundreds of such overruled cases may be found in the American and English books of reports.

An appeal court’s panel is "bound by decisions of prior panels unless an en banc decision, Supreme Court decision, or subsequent legislation undermines those decisions." **United States v. Washington, 872 F.2d 874, 880 (9th Cir. 1989).**

Although the doctrine of stare decisis does not prevent reexamining and, if need be, overruling prior decisions, "It is . . . a fundamental jurisprudential policy that prior applicable precedent usually must be followed even though the case, if considered anew, might be decided differently by the current justices. This policy . . . 'is based on the assumption that certainty, predictability and stability in the law are the major objectives of the legal system; i.e., that parties should be able to regulate their conduct and enter into relationships with reasonable assurance of the governing rules of law.'" **Moradi-Shalal v. Fireman's Fund Ins. Companies (1988) 46 Cal.3d 287, 296.** Accordingly, a party urging overruling a precedent faces a rightly onerous task, the difficulty of which is roughly proportional to a number of factors, including the age of the precedent, the nature and extent of public and private reliance on it, and its consistency or inconsistency with other related rules of law.

**http://void-judgments.com** is an informational website about dismissing/vacating judgments for those who have a default judgment against them.

*We believe that if you don’t know your rights, you don’t know your options.*
Case Law

Misc. Cases on Void Judgments

**Dictionary.Law.com**: void adj. referring to a statute, contract, ruling or anything which is null and of no effect. A law or judgment found by an appeals court to be unconstitutional is **void**, a rescinded (mutually cancelled) contract is **void**, and a marriage which has been annulled by court judgment is **void**.

*Diamond v. Diamond*, a **void** divorce

*United States v. One Rural Lot NO. 10,356, ETC.*

OSHA decision on Adanlock Office Environments, Div. of Superior Jamestown Corp.

*Latimer v. Latimer*, a **void** divorce, Process and Service--acceptance of service--back...

*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.

http://www.law.emory.edu/1circuit/jan2001/00-1554.01a.html

*Meyer v. Meyer*

*Hamill v. Bay Bridge*

http://www.courts.state.me.us/opinions/documents/98me181h.htm

**State of Illinois Court Opinion**: *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 Code of Civil Procedure Title 2-§ 1401 (see link below). 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.

[Title 2 > Chapter 24 > Subchapter IV > § 1401](http://www.illinois.gov/ctas/index.jsp) Procedure for consideration of alleged violations.

*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)**

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).**

"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 judgment 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 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 ).**

"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

"Jurisdiction, once challenged, cannot be assumed and must be decided." Also: "The law provides that once State and Federal Jurisdiction has been challenged, it must be proven." Main v. Thiboutot 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.

"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.
"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)

A judgment obtained without jurisdiction over the defendant is void. Overby v. Overby, 457 S.W.2d 851 (Tenn. 1970).

A void judgment is one of the grounds for relief under Rule 60, Tenn. R. Civ. Proc. See Rule 60.02(3).

When the law prescribes a place of imprisonment to which a convicted defendant can be sentenced, the court cannot direct a different place of incarceration, and, if it does, the sentence is void and the defendant is entitled to resentencing. State v. Bouck, 2001 ND 153, 633 N.W.2d 163

There is no time limit for attacking a void judgment under N.D.R.Civ.P. 60(b)(iv). Eggl v. Fleetguard, Inc., 1998 ND 166, 583 N.W.2d 812


A void conviction may be challenged in a post-conviction habeas corpus proceeding. Beck, 922 S.W.2d 181; Heath, 817 S.W.2d at 336; Ex parte McIver, 586 S.W.2d 851; Burns, 441 S.W.2d 532; Jenkins, 433 S.W.2d 701; Higginbotham, 382 S.W.2d 927; Strother, 395 S.W.2d 629; Rawlins, 255 S.W.2d 877.

If such an action by the trial court in Seidel rendered the dismissal void, then an even stronger case can be made that the violation of Article 1.13(c) in the instant case rendered the resulting conviction void. By Article 1.13(c), the Legislature has specifically prohibited a trial court from accepting a defendant’s waiver of a jury trial until the court has appointed an attorney to represent him. Here, not only was "[t]he trial judge's action ... not authorized by law ...," Seidel, 39 S.W.2d at 225, the action was specifically prohibited by statute. Requiring an objection at trial in these circumstances would lead to a Catch-22 situation: a defendant must object to not having an attorney appointed to advise him as to waiver of jury trial, without having been advised by an attorney that he was entitled to such representation and advice. Given the absurdity of such a situation, we chose in the past to characterize the resulting conviction as "void" and allow the defendant to raise the issue in a habeas corpus proceeding. Otherwise, defendants, such as appellant, are left without a remedy even though there has been a clear violation of a mandatory statute.

Thus, in a long line of cases, most notably Heath and Seidel, we have held that some defects, even though they are "just" statutory defects, are so egregious that they are cognizable on habeas corpus. See Heath, 817 S.W.2d at 336; Seidel, 39 S.W.3d 221 at 225; Ex parte McIver, 586 S.W.2d 851 (Tex.Crim.App. 1979). In Heath, we characterized these defects as rendering the conviction "void." 817 S.W.2d at 336. However, we could have properly characterized as "fundamental" errors those "unauthorized sentences" and "statutory defects" which render a sentence void. No matter what we choose to call these "errors," the underlying purpose is the same: to balance a convicted person’s interest in the vindication of his legal rights and the State’s interest in the finality of convictions.

In Texas, a defendant has a statutory right to have counsel appointed before he can waive his right to a jury trial. The Legislature has decided that the right to a jury trial is so important that before a defendant can waive that right, he should have the opportunity to consult with
counsel. If a trial court denies a defendant that right by refusing to appoint counsel, equity demands that the balance be struck in favor of the defendant. Therefore, a defendant should be allowed to contest, in a habeas corpus proceeding, a violation of Article 1.13(c).

The court then concluded that, in the case before it, the trial court had jurisdiction of the subject matter because it was a circuit court which has jurisdiction of all felonies and that any objection King had to jurisdiction over his person was waived by his personal appearance. (State v. King, 426 So. 2d 12 (Fla. 1982)]

Conviction of a nonexistent crime results in a void judgment not subject to waiver. People v. McCarty 94 Ill. 2d 28, 37 (1983).

A recent discussion of the Rule 60(b)(4) grounds for attack on a void judgment may be found in Fisher v. Amaraneni, 565 So. 2d 84 (Ala. 1990). The judgment was set aside for lack of personal jurisdiction based on improper service by publication. The court defined a judgment as void "only if the court rendering it lacked jurisdiction of the subject matter or of the parties, or if it acted in a manner inconsistent with due process." Id. at 86 (citing Wonder v. Southbound Records, Inc., 364 So. 2d 1173 (Ala. 1978)). It should be noted here that a Rule 60(b)(4) motion involves a different standard of review than the other Rule 60(b) subsections since the court held "[w]hen the grant or denial turns on the validity of the judgment, discretion has no place for operation. If the judgment is void it must be set aside ...."Fisher, 565 So. 2d at 87.

"The consequences of an act beyond the court's jurisdiction in the fundamental sense differ from the consequences of an act in excess of jurisdiction. An act beyond a court's jurisdiction in the fundamental sense is void; it may be set aside at any time and no valid rights can accrue thereunder. In contrast, an act in excess of jurisdiction is valid until set aside, and parties may be precluded from setting it aside by such things as waiver, estoppel, or the passage of time." People v. Ruiz (1990) 217 Cal. App. 3d 574, 265 Cal. Rptr. 886

Held: Petitioner was not accorded a fair and impartial trial, to which he was entitled under the Due Process Clause of the Fourteenth Amendment; his conviction is void; the judgment denying habeas corpus is vacated; and the case is remanded to the District Court for further proceedings affording the State a reasonable time to retry petitioner. 366 U.S. 717

See American Surety Co. v. Baldwin, 287 U.S. 156, 166-67 (1932) (applying res judicata to action seeking to set aside judgment for lack of jurisdiction);"Browning v. Navarro, 887 F.2d 553, 558-59 (5th Cir. 1989) (res judicata applies to actions to void judgment for fraud).

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 clause Rule 60(b)(4) carries no real time limit.

In a long and venerable line of cases, the Supreme Court has held that, without proper jurisdiction, a court cannot proceed at all, but can only note the jurisdictional defect and dismiss the suit. See, e.g., Capron v. Van Noorden, 2 Cranch 126; Arizonans for Official English v. Arizona, 520 U.S. 43. Bell v. Hood, supra; National Railroad Passenger Corp. v. National Assn. of Railroad Passengers, 414 U.S. 453, 465, n. 13; Norton v. Mathews, 427 U.S. 524, 531; Secretary of Navy v. Avrech, 418 U.S. 676 , 678 (per curiam); United States v. Augenblick, 393 U.S. 348 ; Philbrook v. Glodgett, 421 U.S. 707, 721; and Chandler v. Judicial Council of Tenth Circuit, 398 U.S. 74, 86—88,
distinguished. For a court to pronounce upon a law's meaning or constitutionality when it has no jurisdiction to do so is, by very definition, an ultra vires act. Pp. 8—17.

Recent Decisions

...And there is no indication in the statute that such relief cannot be granted because the judgment also involve a judicial error which may have caused the surprise.

In the instant case did not the court have statutory jurisdiction over its judgment although it may have committed a judicial error in its rendition? That is dependent upon whether or not a judgment given in excess of a stipulation, and when the party interested is not present, is one taken against him through his "mistake, inadvertence, surprise or inexcusable neglect" Under a statute precisely like our own in the Oregon court held, that, "a judgment rendered against a party contrary to an understanding or argument with his adversary is taken against him by 'surprise' within the meaning of this section" (Durham v. Commercial Nat, Bank (1904) 45 Ore, 385, 387, 77 Pac, 902; Bellinger and Cotton Comp.. Stats., § 103 (Ore,).) A Kentucky case reached the same result. (Sebree v. Sebree (1907) 30 Ky Law Rep. 709, 9 S. W. 282.) On the other hand, the court in the case under consideration arrived at a contrary result. However, the cases cited in support of this decision, with one exception, do not come within the statutory jurisdiction conferred by the code, because the applications for relief had not been made within six, months after judgment, The only exception was in a case where the facts precluded any possibility of surprise, as all parties were present when the order in question, granting relief in excess of a stipulation, was rendered. (Dyerville Mfg. Co. v, Helles (1894) 102 Cal. 615, 36 Pac 928; Egan v. Egan (1891) 90 Cal 15, 27 Pac, 22; the exception is Mann v. Mann (1907) 6 Cal. App, 610, 92 Pac. 740.) In all the other cases the court had to rely upon its general jurisdiction over judgments, but has already shown, it has no authority to correct judicial errors therein, and as the error in these cases came within that category the court naturally could give the applicant no relief, Therefore, if the appellate court was basing its negative answer, to the question above propounded, upon these cases it would seem that its conclusion was unjustifiable.

The question then may be asked, what difference does it make whether this relief be granted or not; the party has his remedy by motion for a new trial or an appeal, If the judgment were vacated, in all probability, another trial would be necessary to get a proper judgment. But suppose a mistake like this, in the judgment, is not discovered until after sixty days from the entry thereof. The time for moving for a new trial, or appealing would have expired. Then the only remedy would be under section 473 of the Code of Civil Procedure, as there the injured party is given six months in which to ask for relief. So, although the practical result of this case, at first glance may not seem to be harsh, still there are situations where this decision would deprive a litigant of a right to which, apparently, he is entitled, and which other jurisdictions would give him.

Pleading: Motion to Vacate Judgment by default: Mistake by Attorney — "The policy of the law is it have every litigated cause tried on its merits". Barri v. Rigero (1914) 168 Cal, 736, 740, 145 Pac. 95. An indication of how far the courts are willing to go in order to bring a case to trial before them on its merits is given by the decision of Toon v, Pickwick Stages (April 7, 1924) 43 Cal. App. Dec 808 Pac. 628, reversing an order deny...

egregious, adjective: Conspicuously and outrageously bad or reprehensible.

cog·ni·za·ble Knowable or perceivable. Law. Able to be tried before a particular court.

http://void-judgments.com is an informational website about dismissing/vacating judgments for those who have a default judgment against them
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All judgments are VOID JUDGMENTS

They can be vacated; made to go away (Although, it is an uphill battle, much like pushing a rope). Rarely has any authenticated evidence, competent fact witness, or even a claim been put before a court and on the record.

Defective affidavits, hearsay as evidence and no stated damages are but a few elements that rob the court of subject matter jurisdiction (at last count there are at least 20 reasons to vacate a judgment). Some of the elements are: denial of due process, denial of meaningful access to court, fraud upon the court, and fraud upon the court by the court.

Common pleas such as "open account" or "account stated" are often used in place of, and sometimes in conjunction with, breach of contract. To file under breach a contract would require that they bring in the signed contract, agreement, or note. They don't bring in a contract, they bring in the "terms of agreement" which has no signature or persons name on it, a template that could apply to anyone.

These are just some of the tools used by debt collectors (credit card debt collectors in particular) and their counsel to perpetrate a fraud upon the court, with or without the courts cooperation or complicity.

At the same time, courts, almost as a rule, openly display a bitter and venomous hatred of pro se / pro per litigants. So don't expect the courts to just roll over and give you what you demand without a battle. It doesn't matter to them that you are right, it matters only that you are pro se; an inferior, low life being and the courts have a position and the income of their brotherhood to protect. These are the four reasons:

1. Courts of general, limited, or inferior jurisdiction have no inherent judicial power. [1]

   • Courts of general, limited, or inferior jurisdiction get their jurisdiction from one source and one source only: SUFFICIENT PLEADINGS.

   • Someone before the court must tell the court what its jurisdiction is.

   • Without pleadings sufficient to empower the court to act, that court cannot have judicial capacity.

   • No judge has the power to determine whether he has jurisdiction. He does have the duty to tell when he does not.

What this means to you is that no court can declare that it has the legal power to hear or decide cases, i.e. jurisdiction. Jurisdiction must be proved and on the record. Without sufficient pleadings, without jurisdiction, no court can issue a judgment that isn’t void ab initio, void from the beginning, void on its face, a nullity, without force and effect.

2. We have a common law system.
• No statute, no rule, or no law means what it says as it is written.
• Only the holding tells you what it means.
• The statute means what the highest court of competent jurisdiction has ruled and determined that the statute means in their most recent ruling.

What this means to you is that courts are governed/ruled by case law, what has been determined before, what the highest court of competent jurisdiction has said the law is, means. It is called the Doctrine of Precedent. This doctrine is so powerful that it can kill and has. A family in Florida has become quite familiar with this doctrine when they tried for 15 years to prevent feeding tubes from being removed from their daughter who was in a vegetative state.

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4. Before any determination, there must be a court of complete or competent jurisdiction.

• There must be two parties with capacity to be there.
• There must be subject matter jurisdiction.
• Appearance or testimony of a competent fact witness.

What this means to you is that without jurisdiction, complete jurisdiction, no court can issue a judgment that isn’t void, a nullity, without force or effect, on its face and in fact.

[1] "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time may ordain and establish." U.S. Constitution article. III, § 1, cl. 1.

see case law opinions

http://void-judgments.com is an informational website about dismissing/vacating judgments for those who have a default judgment against them

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A judgment is void where it is apparent that the court rendering the judgment had no jurisdiction over the parties or no jurisdiction of the subject matter. See Mapco, Inc. v. Forrest, 795 S.W.2d 700, 703 (Tex. 1990).

**VOID (not merely VOIDABLE) ORDERS AND JUDGMENTS - APPELLATE DECISIONS**

**TRIAL COURT RETAINED PLENARY POWER BECAUSE DEFAULT JUDGMENT WAS NOT FINAL**

*In re Drake* (Tex.App.- Houston [14th Dist.] Feb. 9, 2010)(per curiam)

(mandamus challenging *order granting new trial* denied; *default judgment was only partial, did not dispose of all claims in suit, thus there was no final judgment*, unaddressed claims remained pending and *court retained plenary power to set aside the default judgment*)

MOTION OR WRIT DENIED: Per Curiam

Before Justices Frost, Boyce and Sullivan

14-09-01058-CV  In Re John Drake

Appeal from 133rd District Court of Harris County

Trial Court Judge: Jacaln Fairland

*Medina v. Benkiser* (Tex.App.- Houston [1st Dist.] Dec. 31, 2009) (Hanks)(**plenary jurisdiction**) *(trial court did not have authority to modify judgment* after appeal and add an award attorney's fees; **prior appeal was not interlocutory**), modified **judgment found void**

Our opinion and judgment in Medina I constituted the final resolution of the controversy between the parties, and the trial court lacked plenary power to award attorney's fees to appellees. By affirming the trial court's judgment, our judgment essentially adopted the judgment of the trial court dismissing the case for lack of jurisdiction. Because the trial court did not award attorney's fees to the appellees in its judgment--and the appellees did not raise this failure to award fees as an issue in Medina I--our opinion and judgment in Medina I closed the door on the possibility of the appellees recovering their
attorney's fees in this case. We sustain appellants' first issue and hold that the trial court lacked plenary power to modify the judgment and award appellees' attorney's fees.

VACATE TRIAL COURT JUDGMENT AND DISMISS CASE: Opinion by Justice Hanks

Before Justices Keyes, Alcala and Hanks 01-08-00777-CV Debra Medina, Mallory Miller, Jr., Dusant Costine, Chad Creighton, Richard Wyatt and Kay Fisher v. Tina Benkiser and The Republican Party of Texas Appeal from County Civil Court at Law No 4 of Harris County Trial Court Judge: Hon. Roberta A. Lloyd

Though the parties do not challenge the validity of the nunc pro tunc divorce decree, we will address this issue as it is jurisdictional. See Barton v. Gillespie, 178 S.W.3d 121, 126 (Tex. App.-Houston [1st Dist.] 2005, no pet.) (stating that a judgment nunc pro tunc correcting a judicial error after the trial court's plenary power has expired is void) (citing Dikeman v. Snell, 490 S.W.2d 183, 186 (Tex. 1973)); Waite v. Waite, 150 S.W.3d 797, 800 (Tex. App.-Houston [14th Dist.] 2004, pet. denied) (stating that appellate court has no jurisdiction over void judgment; appellate court must simply declare such a judgment void and dismiss the appeal). A court always has jurisdiction to determine its own jurisdiction. Houston Mun. Employees Pension Sys. v. Ferrell, 248 S.W.3d 151, 158 (Tex. 2007). In Interest of MV, MV and EV (Tex.App.- Houston [14th Dist.] Sep. 1, 2009)(Yates) (child support arrearage based on nunc-pro-tunc judgment, amount of child support had not been filled in on the original order) (effective date of nunc pro tunc judgment as to support amount) (clerical error vs. judicial error, NPT order adding monthly amount to blank space on decree not deemed judicial error) (void judgments and orders)

AFFIRMED: Opinion by Justice Brock Yates

Before Chief Justice Hedges, Justices Brock Yates and Frost 14-08-00418-CV In the Interest of M.V, M.V. and E.V. Appeal from 311th District Court of Harris County Trial Court Judge: DOUGLAS C. WARNE

In Re Johnson (Tex.App.- Houston [14th Dist.] Jul. 23, 2009)(per curiam denial of mandamus) (mandamus challenge to allegedly void order improper, regular appeal from final judgment available)
MOTION OR WRIT DENIED: Per Curiam
Before Justices Anderson, Guzman and Boyce
14-09-00603-CV In Re R. Wayne Johnson
Appeal from 122nd District Court of Galveston County

Mandamus challenge to alleged void order not proper when regular appeal is available

**A void judgment can become final for purposes of appeal.**

Newsom v. Ballinger Indep. Sch. Dist., 213 S.W.3d 375, 379, 380 (Tex. App.- Austin 2006, no pet.); In re Vlasak, 141 S.W.3d 233, 237-38 (Tex. App.- San Antonio 2004, orig. proceeding). Each order "disposes of the entire case" and directs that "[p]laintiff shall take nothing by this suit." Having disposed of all claims, the orders are final and thus are appealable even if void. See In re Vlasak, 141 S.W.3d at 237-38 (holding court can render final judgment even if it lacks personal jurisdiction - judgment is void if challenged, but no less final); Estate of Courvier, No. 04-07-00469-CV, 2007 WL 2935809, at *1 (Tex. App.- San Antonio Oct. 10, 2007, no pet.) (mem. op.) (assuming, without deciding, trial court's judgment is void, appellant was required to file timely notice of appeal). Therefore, we need not determine whether either order is void because relator has an adequate remedy by appeal. See In re Hamel, 180 S.W.3d 226, 229 (Tex. App.- San Antonio 2005, orig. proceeding) (stating that mandamus relief is not available if the order complained of is appealable because appeal is almost always adequate remedy). Relator has not established his entitlement to the extraordinary relief of a writ of mandamus. Accordingly, we deny relator's petition for writ of mandamus.

**Divorce Decree Partially Void for Lack of Personal Jurisdiction over Nonresident Spouse**

Here, the trial court's final divorce decree was void only in part. See Browning v. Prostok, 165 S.W.3d 336, 346 (Tex. 2005) ("A judgment is void only when it is apparent that the court rendering judgment 'had no jurisdiction of the parties or property, no jurisdiction of the subject matter, no jurisdiction to enter the particular judgment, or no capacity to act.'" (quoting Browning v. Placke, 698 S.W.2d 362, 363 (Tex. 1985) (per curiam))); Dosamantes v. Dosamantes, 500 S.W.2d 233, 236 (Tex. Civ. App.-Texarkana 1973, writ dism'd)
(explaining that a divorce action by a resident is directed to the resident's marital status, and hence, is quasi in rem). The trial court had jurisdiction to grant a divorce to Quick, as a resident, even though it lacked personal jurisdiction over Church, his nonresident spouse. See Dawson-Austin, 968 S.W.2d 319 (Tex. 1998). We therefore modify the judgment to eliminate only those orders that exceed the trial court's jurisdiction.

**Church v. Quick** (Tex.App.- Houston [14th Dist.] Jul. 14, 2009)(Guzman)

(restricted appeal, a nonresident spouse)(Because the trial court lacked personal jurisdiction over the nonresident spouse, the court of appeals modifies the judgment to eliminate all relief other than the divorce and affirms the judgment as modified.)

AFFIRMED AS MODIFIED: Opinion by Justice Guzman
Before Justices Anderson, Guzman and Boyce)

14-08-00131-CV Joyce Gail Church v. Kenneth Richard Quick
Appeal from 246th District Court of Harris County
Trial Court Judge: **Jim York**

**Void vs. Voidable Order**

(Hanks)(informal marriage, common law marriage, collateral attack on prior divorce decree that omitted SAPCR re child of the marriage, but of another man, void vs. voidable judgment)
REVERSE TC JUDGMENT AND REMAND CASE TO TC FOR FURTHER PROCEEDINGS:
Opinion by Justice Hanks
Before Justices Jennings, Hanks and Bland

01-07-01102-CV Selene Lara Mateos Baqdounes v. Nazir Baqdounes
Appeal from 246th District Court of Harris County
Trial Court Judge: **Hon. Jim York**

**Void Temporary Injunction Order - No Trial Date Set Therein**

(temporary injunction void; no trial date included in temporary injunction order)
REVERSE TC JUDGMENT AND REMAND CASE TO TC FOR FURTHER PROCEEDINGS:
Opinion by Justice Alcala
Before Chief Justice Radack, Justices Alcala and Hanks

01-08-00915-CV City of Navasota v. NationStar Mortgage, LLC
Appeal from 506th District Court of Grimes County
Order entered after Plenary Jurisdiction has expired, but see --> NPT exception

In re The Office of Attorney General of Texas (Tex.App.- Houston [1st Dist.] May 22, 2008)(Taft) (mandamus granted) (order found void, entered after expiration of plenary jurisdiction, appeal from associate judge to referring court)

GRANT PETITION FOR WRIT OF MANDAMUS: Opinion by Justice Taft
Before Justices Taft, Jennings and Bland

01-08-00114-CV In re The Office of the Attorney General of Texas
Appeal from 308th District Court of Harris County

Trial Court should not have made ruling while motion to recuse was pending

[recusal motion, order signed while motion pending found void, exception did not apply]

REVERSE TC JUDGMENT AND RENDER JUDGMENT: Opinion by Justice Nuchia
Before Justices Nuchia, Keyes and Higley

01-06-00239-CV Peter J. Riga and Michael Easton v. Commission for Lawyer Discipline
Appeal from 151st District Court of Harris County

Order entered in Violation of Automatic Bankruptcy Stay Void Not Merely Voidable

(violation of bankruptcy stay, void order)

VACATE TC JUDGMENT AND DISMISS CASE: Opinion by Justice Alcala
Before Justices Jennings, Alcala and Hanks

01-03-01263-CV  Houston Pipeline Company, LP v. Bank of America, N.A., As Administrative Agent, and as Representative of the Wilmington Trust Company, Trustee of the
Void Judgments and Standing to Complain about Violations of the Automatic Bankruptcy Stay

The automatic stay "deprives state courts of jurisdiction over the debtor and his property until the stay is lifted or modified." Baytown State Bank v. Nimmons, 904 S.W.2d 902, 905 (Tex. App.--Houston [1st Dist.] 1995, writ denied) (quoting Owen Elec. Supply, Inc. v. Brite Day Constr., Inc., 821 S.W.2d 283, 287 (Tex. App.--Houston [1st Dist.] 1991, writ denied)). Consequently, "[a]n action taken in violation of the automatic stay is void, not merely voidable." Continental Casing Corp. v. Samedan Oil Corp., 751 S.W.2d 499, 501 (Tex. 1988); see also Howell v. Thompson, 839 S.W.2d 92, 92 (Tex. 1992) (order). A void judgment results when, as here, the trial court had no jurisdiction over the parties or subject matter. State ex rel. Latty v. Owens, 907 S.W.2d 484, 485 (Tex. 1985). If the judgment is void because the trial court lacked jurisdiction, we vacate the trial court's judgment and dismiss the case. Tex. R. App. P. 43.2(e); see also Juarez v. Tex. Ass'n of Sporting Officials El Paso Chapter, 172 S.W.3d 274, 278 (Tex. App.--El Paso 2005, no pet. h.) (holding that if trial court lacked jurisdiction, appellate court has jurisdiction only to set judgment aside and dismiss cause) (citing Dallas County Appraisal Dist. v. Funds Recovery, Inc., 887 S.W.2d 465, 468 (Tex. App.--Dallas 1994, writ denied)).

The Bank contends that although an action in violation of the automatic stay is void rather than voidable, Houston Pipeline does not have standing to complain that the judgment is void because it is not a debtor. This standing requirement, however, has its nexus with voidable, not void, judgments. See Philadelphia Life Ins. Co. v. Estate of Fuel Oil Supply Terminaling, Inc. (In re Fuel Oil Supply & Terminaling, Inc.), 30 B.R. 360, 362 (N.D. Tex. 1983). (9) Thus, the question of whether a nondebtor can challenge a voidable judgment is not jurisdictional. Because in Texas we recognize that a judgment entered in violation of the bankruptcy stay is void for lack of jurisdiction, this is a fundamental error that can be recognized by the
appellate court, sua sponte, or raised for the first time on appeal by a party. See Saudi v. Brieven, 176 S.W.3d 108, 113 (Tex. App.--Houston [1st Dist.] 2004, no pet.); Baytown State Bank, 904 S.W.2d at 905. Therefore, we must address the issue of whether the automatic stay was violated to determine whether we have authority to hear this appeal. See Waite v. Waite, 150 S.W.3d 791, 800 (Tex. App.--Houston [1st Dist.] 2004, pet. denied).

4 Secrets of the Legal Industry

Most judgments are not merely voidable, but are in fact VOID JUDGMENTS. They can be vacated; made to go away (Although, it is an up hill battle, much like pushing a rope). Rarely has any authenticated evidence, competent fact witness, or even a claim been put before a court and on the record.

Defective affidavits, hearsay as evidence and no stated damages are but a few elements that rob the court of subject matter jurisdiction (at last count there are 22 elements that deprive the court of SMJ). Some of the elements are: denial of due process, denial of meaningful access to court, fraud upon the court, and fraud upon the court by the court.

(Although these pages are aimed primarily towards debt, credit card debt, the principals set forth herein apply to virtually all civil and criminal cases.)

Common pleas such as "open account" or "account stated" are often used in place of, and sometimes in conjunction with, breach of contract. To file under breach a contract would require that they bring in the signed contract, agreement, or note. They don't bring in a contract, they bring in the "terms of
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These are the four secrets:

1. Courts of general, limited, or inferior jurisdiction have no inherent judicial power.*

   - Courts of general, limited, or inferior jurisdiction get their jurisdiction from one source and one source only: **SUFFICIENT PLEADINGS**.
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Void Judgment Details

Restated with evidence cited

22 Reasons Simply Stated

Research Links, Videos, Court Filings & Confessions

Summary

http://mysite.verizon.net/~vze2snju/void/22reasons.htm

Twenty-two reasons to vacate a Void Judgment

The Really BIG Deal

The real issue in void judgments is, SUBJECT MATTER JURISDICTION!!!!


I can go into void judgments at great length with enough court case cites to make anybody's eyes glaze over but I shall refrain. Let it be said that the really big deal with subject matter jurisdiction is that it can never be presumed, never be waived, and cannot be constructed even by mutual consent of the parties. Subject matter jurisdiction is two part ; the statutory or common law authority for the court to hear the case and the appearance and testimony of a competent fact witness, in other words, sufficiency of pleadings.

Even if a court (judge) has or appears to have subject matter jurisdiction, subject matter jurisdiction can be lost.

Major reasons why subject matter jurisdiction is lost:

(2) Defective petition filed, Same case as above.

(3) Fraud committed in the procurement of jurisdiction, Fredman Brothers Furniture v. Dept. of Revenue, 109 Ill. 2d 202, 486 N.E. 2d 893 (1985)

(4) Fraud upon the court, In re Village of Willowbrook, 37 Ill, App. 3d 393 (1962)

(5) A judge does not follow statutory procedure, Armstrong v. Obucino, 300 Ill 140, 143 (1921)


(7) Violation of due process, Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019; Pure Oil Co. v. City of Northlake, 10 Ill.2d 241, 245, 140 N.E. 2d 289 (1956); Hallberg v Goldblatt Bros., 363 Ill 25 (1936); (8) If the court exceeded it's statutory authority. Rosenstiel v. Rosenstiel, 278 F. Supp. 794 (S.D.N.Y. 1967)


(10) Where no justiciable issue is presented to the court through proper pleadings, Ligon v. Williams, 264 Ill. App 3d 701, 637 N.E. 2d 633 (1st Dist. 1994)


(12) Where any litigant was represented before a court by a person/law firm that is prohibited by law to practice law in that jurisdiction.

(13) When the judge is involved in a scheme of bribery (the Alemann cases, Bracey v Warden, U.S. Supreme Court No. 96-6133(June 9, 1997)

(14) Where a summons was not properly issued.

(15) Where service of process was not made pursuant to statute and Supreme Courth Rules, Janove v. Bacon, 6 Ill. 2d 245, 249, 218 N.E. 2d 706, 708 (1953)

(16) When the rules of the Circuit court are not complied with.
(17) When the local rules of the special court are not complied with. (One Where the judge does not act impartially, Bracey v. Warden, U.S. Supreme Court No. 96-6133(June 9, 1997)

(18) Where the statute is vague, People v. Williams, 638 N.E. 2d 207 (1st Dist. (1994)

(19) When proper notice is not given to all parties by the movant, Wilson v. Moore, 13 Ill. App. 3d 632, 301 N.E. 2d 39 (1st Dist. (1973)

(20) Where an order/judgment is based on a void order/judgment, Austin v. Smith, 312 F 2d 337, 343 (1962); English v. English, 72 Ill. App. 3d 736, 393 N.E. 2d 18 (1st Dist. 1979) or

(21) Where the public policy of the State of Illinois is violated, Martin-Tregona v Roderick, 29 Ill. App. 3d 553, 331 N.E. 2d 100 (1st Dist. 1975)

And another that can and should be checked on is does the judge have a copy of his oath of office on file in his chambers? If not, he is not a judge and yes, you can go into his office and demand to see a copy of his oath of office at any time. The laws covering judges and other public officials are to be found at 5 U.S.C. 3331, 28 U.S.C. 543 and 42 U.S.C. 1983 and if the judge has not complied with all of those provisions he is not a judge but a trespasser upon the court. If he is proven a trespasser upon the court(upon the law) not one of his judgments, pronouncements or orders are valid. All are null and void.

In all, there are 22 indices which tell us whether or not a court had subject matter jurisdiction and when examining a judgment one has to know each and every one of them by heart. If he knows them by heart he can go through a judgment like Sherman going though Georgia and point out all of the errors which might make the case a void judgment, null and void upon it's face.

**SUMMARY OF THE LAW OF VOIDS**

Before a court (judge) can proceed judicially, jurisdiction must be complete consisting of two opposing parties (not their attorneys - although attorneys can enter an appearance on behalf of a party, only the parties can testify and until the plaintiff testifies the court has no basis upon which to rule judicially), and the two halves of subject matter jurisdiction = the statutory or common law authority the action is brought under (the theory of indemnity) and the testimony of a competent fact witness regarding the injury (the cause of action). If there is a jurisdictional failing appearing on the face of the record, the
matter is void, subject to vacation with damages, and can never be time barred.

A question which naturally occurs: "If I vacate avoid judgment, can they just come back and try the case again?" Answer: A new suit must be filed and that can only be done if within the statute of limitations.

"Lack of jurisdiction cannot be corrected by an order nunc pro tunc. The only proper office of a nunc pro tunc order is to correct a mistake in the records; it cannot be used to rewrite history." E.g., Transamerica Ins. Co. v. South, 975 F.2d 321, 325-26 (7th Cir. 1992); United States v. Daniels, 902 F.2d 1238, 1240 (7th Cir. 1990); King v. Ionization Int'l, Inc., 825 F.2d 1180, 1188 (7th Cir. 1987). And Central Laborer’s Pension and Annuity Funds v. Griffee, 198 F.3d 642, 644(7th cir. 1999).

The number of void judgments on the books in America’s courthouses is so great, there is no practical way to estimate how many there are!

IF EVERY VOID JUDGMENT WAS VACATED WITH DAMAGES, IT WOULD REPRESENT THE GREATEST SHIFT IN MATERIAL WEALTH IN THE HISTORY OF THE WORLD!

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Interested in knowing more?

EVERYTHING YOU ALWAYS WANTED TO KNOW ABOUT VOID JUDGMENTS BUT WERE AFRAID TO ASK!

Void judgments are those rendered by a court which lacked jurisdiction, either of the subject matter or the parties, Wahl v. Round Valley Bank 38 Ariz. 411, 300 P. 955 (1931); Tube City Mining & Milling Co. v. Otterson, 16 Ariz. 305, 146 P. 203
A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court, *Long v. Shorebank Development Corp.*, 182 F.3d 548 (C.A. 7 Ill. 1999).


A void judgment is one which from the beginning was complete nullity and without any legal effect, *Hobbs v. U.S. Office of Personnel Management*, 485 F.Supp. 456 (M.D. Fla. 1980).

Void judgment is one that, from its inception, is complete nullity and without legal effect, *Holstein v. City of Chicago*, 803 F.Supp. 205, reconsideration denied 149 F.R.D. 147, affirmed 29 F.3d 1145 (N.D. Ill 1992).


A void judgment is one which, from its inception, was, was a complete nullity and without legal effect, *Rubin v. Johns*, 109 F.R.D. 174 (D. Virgin Islands 1985).

A void judgment is one which, from its inception, is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind the parties or to support a right, of no legal force and effect whatever, and incapable of enforcement in any manner or to any degree - *Loyd v. Director, Dept. of Public Safety*, 480 So. 2d 577 (Ala. Civ. App. 1985).
A judgment shown by evidence to be invalid for want of jurisdiction is a void judgment or at all events has all attributes of a void judgment, *City of Los Angeles v. Morgan*, 234 P.2d 319 (Cal.App. 2 Dist. 1951).

Void judgment which is subject to collateral attack, is simulated judgment devoid of any potency because of jurisdictional defects, *Ward v. Terriere*, 386 P.2d 352 (Colo. 1963).

A void judgment is a simulated judgment devoid of any potency because of jurisdictional defects only, in the court rendering it and defect of jurisdiction may relate to a party or parties, the subject matter, the cause of action, the question to be determined, or relief to be granted, *Davidson Chevrolet, Inc. v. City and County of Denver*, 330 P.2d 1116, certiorari denied 79 S.Ct. 609, 359 U.S. 926, 3 L.Ed. 2d 629 (Colo. 1958).

Void judgment is one entered by court without jurisdiction of parties or subject matter or that lacks inherent power to make or enter particular order involved and such a judgment may be attacked at any time, either directly or collaterally, *People v. Wade*, 506 N.W.2d 954 (Ill. 1987).

Void judgment may be defined as one in which rendering court lacked subject matter jurisdiction, lacked personal jurisdiction or acted in manner inconsistent with due process of law *Eckel v. MacNeal*, 628 N.E. 2d 741 (Ill. App. Dist. 1993).

Void judgment is one entered by court without jurisdiction of parties or subject matter or that lacks inherent power to make or enter particular order involved; such judgment may be attacked at any time, either directly or collaterally *People v. Sales*, 551 N.E.2d 1359 (Ill.App. 2 Dist. 1990).

Res judicata consequences will not be applied to a void judgment which is one which, from its inception, is a complete nullity and without legal effect, *Alcock v. Alcock*, 437 N.E. 2d 392 (Ill. App. 3 Dist. 1982).

Void judgment is one which, from its inception is complete nullity and without legal effect *In re Marriage of Parks*, 630 N.E. 2d 509 (Ill.App. 5 Dist. 1994). Void judgment is one entered by court that lacks the inherent power to make or enter the particular order involved, and it may be attacked at any time, either directly or collaterally; such a judgment would be a nullity, *People v. Rolland*, 581 N.E.2d 907, (Ill.App. 4 Dist. 1991).
Void judgment under federal law is one in which rendering court lacked subject matter jurisdiction over dispute or jurisdiction over parties, or acted in manner inconsistent with due process of law or otherwise acted unconstitutionally in entering judgment, U.S.C.A. Const. Amed. 5, *Hays v. Louisiana Dock Co.*, 452 n.e.2D 1383 (Ill. App. 5 Dist. 1983).

A void judgment has no effect whatsoever and is incapable of confirmation or ratification, *Lucas v. Estate of Stavos*, 609 N. E. 2d 1114, rehearing denied, and transfer denied (Ind. App. 1 dist. 1993). Void judgment is one that from its inception is a complete nullity and without legal effect *Stidham V. Whelchel*, 698 N.E.2d 1152 (Ind. 1998).

Relief from void judgment is available when trial court lacked either personal or subject matter jurisdiction, *Dusenberry v. Dusenberry*, 625 N.E. 2d 458 (Ind.App. 1 Dist. 1993).


Judgment is void if court that rendered it lacked personal or subject matter jurisdiction; void judgment is nullity and may be vacated at any time, *Matter of Marriage of Welliver*, 869 P.2d 653 (Kan. 1994).

A void judgment is one rendered by a court which lacked personal or subject matter jurisdiction or acted in a manner inconsistent with due process. In *re Estate of Wells*, 983 P.2d 279, (Kan. App. 1999).

Void judgment is one rendered in absence of jurisdiction over subject matter or parties, 310 N.W. 2d 502, (Minn. 1981).

A void judgment is one rendered in absence of jurisdiction over subject matter or parties, *Lange v. Johnson*, 204 N.W.2d 205 (Minn. 1973).

A void judgment is one which has merely semblance, without some essential element, as when court purporting to render is has no jurisdiction, *Mills v. Richardson*, 81 S.E. 2d 409, (N.C. 1954).

A void judgment is one which has a mere semblance, but is lacking in some of the essential elements which would authorize the court to proceed to judgment, *Henderson v. Henderson*, 59 S.E. 2d 227, (N.C. 1950).
Void judgment is one entered by court without jurisdiction to enter such judgment, *State v. Blankenship*, 675 N.E. 2d 1303, (Ohio App. 9 Dist. 1996).

Void judgment, such as may be vacated at any time is one whose invalidity appears on face of judgment roll, *Graff v. Kelly*, 814 P.2d 489 (Okl. 1991).


Where condition of bail bond was that defendant would appear at present term of court, judgment forfeiting bond for defendant's bail to appear at subsequent term was a void judgment within rule that laches does not run against a void judgment, *Com. V. Miller*, 150 A.2d 585 (Pa. Super. 1959).

A void judgment is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment, *State v. Richie*, 20 S.W.3d 624 (Tenn. 2000).

Void judgment is one which shows upon face of record want of jurisdiction in court assuming to render judgment, and want of jurisdiction may be either of person, subject matter generally, particular question to be decided or relief assumed to be given, *State ex rel. Dawson v. Bomar*, 354 S.W. 2d 763, certiorari denied, (Tenn. 1962).

A void judgment is one which shows upon face of record a want of jurisdiction in court assuming to render the judgment, *Underwood v. Brown*, 244 S.W. 2d 168 (Tenn. 1951).

A void judgment is one which shows on face of record the want of jurisdiction in court assuming to render judgment, which want of jurisdiction may be either of the person, or of the subject matter generally, or of the particular question attempted to decided or relief assumed to be given, *Richardson v. Mitchell*, 237 S.W. 2d 577, (Tenn.Ct. App. 1950).

Void judgment is one which has no legal force or effect whatever, it is an absolute nullity, its invalidity may be asserted by any person whose rights are affected at any time and at any place and it need not be attacked directly but may be attacked collaterally whenever and wherever it is interposed, *City of Lufkin v. McVicker*, 510 S.W. 2d 141 (Tex. Civ. App. - Beaumont 1973).

A void judgment is one that has been procured by extrinsic or collateral fraud, or entered by court that did to have jurisdiction over subject matter or the parties, *Rook v. Rook*, 353 S.E. 2d 756, (Va. 1987).

A void judgment is a judgment, decree, or order entered by a court which lacks jurisdiction of the parties or of the subject matter, or which lacks the inherent power to make or enter the particular order involved, *State ex rel. Turner v. Briggs*, 971 P.2d 581 (Wash. App. Div. 1999).

A void judgment or order is one that is entered by a court lacking jurisdiction over the parties or the subject matter, or lacking the inherent power to enter the particular order or judgment, or where the order was procured by fraud, In re *Adoption of E.L.*, 733 N.E.2d 846, (Ill.App. 1 Dist. 2000).


Void judgments generally fall into two classifications, that is, judgments where there is want of jurisdiction of person or subject matter, and judgments procured through fraud, and such judgments may be attacked directly or collaterally, *Irving v. Rodriquez*, 169 N.E.2d 145, (Ill.app. 2 Dist. 1960).

Invalidity need to appear on face of judgment alone that judgment or order may be said to be intrinsically void or void on its face, if lack of jurisdiction appears from the record, *Crockett Oil Co. v. Effie*, 374 S.W.2d 154 (Mo.App. 1964).

Decision is void on the face of the judgment roll when from four corners of that roll, it may be determined that at least one of three elements of jurisdiction was absent: (1) jurisdiction over parties, (2) jurisdiction over subject matter, or (3) jurisdictional power to pronounce particular judgment that was rendered, *B & C Investments, Inc. v. F & M Nat. Bank & Trust*, 903 P.2d 339 (Okla. App. Div. 3, 1995).

Void order may be attacked, either directly or collaterally, at any time, In re *Estate of Steinfield*, 630 N.E.2d 801, certiorari denied, See also *Steinfeld v. Hoddick*, 513 U.S. 809, (Ill. 1994).
Void order which is one entered by court which lacks jurisdiction over parties or subject matter, or lacks inherent power to enter judgment, or order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that party is properly before court, *People ex rel. Brzica v. Village of Lake Barrington*, 644 N.E.2d 66 (Ill.App. 2 Dist. 1994).

While voidable orders are readily appealable and must be attacked directly, void order may be circumvented by collateral attack or remedied by mandamus, *Sanchez v. Hester*, 911 S.W.2d 173, (Tex.App. - Corpus Christi 1995).


When rule providing for relief from void judgments is applicable, relief is not discretionary matter, but is mandatory, *Orner v. Shalala*, 30 F.3d 1307, (Colo. 1994).

Judgments entered where court lacked either subject matter or personal jurisdiction, or that were otherwise entered in violation of due process of law, must be set aside, *Jaffe and Asher v. Van Brunt*, S.D.N.Y.1994. 158 F.R.D. 278.

A "void judgment" as we all know, grounds no rights, forms no defense to actions taken there under, and is vulnerable to any manner of collateral attack (thus here, by ). No statute of limitations or repose runs on its holdings, the matters thought to be settled thereby are not res judicata, and years later, when the memories may have grown dim and rights long been regarded as vested, any disgruntled litigant may reopen the old wound and once more probe its depths. And it is then as though trial and adjudication had never been. 10/13/58 *FRITTS v. KRUGH. SUPREME COURT OF MICHIGAN*, 92 N.W.2d 604, 354 Mich. 97. On certiorari this Court may not review questions of fact. *Brown v. Blanchard*, 39 Mich 790. It is not at liberty to determine disputed facts (Hyde v. Nelson, 11 Mich 353), nor to review the weight of the evidence. *Linn v. Roberts*, 15 Mich 443; *Lynch v. People*, 16 Mich 472. Certiorari is an appropriate remedy to get rid of a void judgment, one which there is no evidence to sustain. *Lake Shore & Michigan Southern Railway Co. v. Hunt*, 39 Mich 469.

What about default judgments?
Anybody you know been subjected to a default judgment? If you ask an attorney or a judge if there is relief from a default judgment, they will ask if you got notice. They will claim if you got notice, there's nothing you can do 'cause you had the opportunity and didn't answer so you lost - tough luck! This just goes to show how little attorneys and judges know about real law.

**EVEN A DEFAULT JUDGMENT MUST BE PROVED!**

Oklahoma's law on default judgments =


A party is not in default so long as he has a pleading on file which makes an issue in the case that requires proof on the part of the opposite party in order to entitle him to recover. *Millikan v. Booth, Okla.*, 4 Okla. 713, 46 P. 489 (1896).

Proof of or assessment of damages upon petition claiming damages, it is error to pronounce judgment without hearing proof or assessing damages. *Atchison, T. & S.F. Ry. Co. v. Lambert*, 31 Okla. 300, 121 P. 654, Ann.Cas.1913E, 329 (1912); *City of Guthrie v. T. W. Harvey Lumber Co.*, 5 Okla. 774, 50 P. 84 (1897).

In the assessment of damages following entry of default judgment, a defaulting party has a statutory right to a hearing on the extent of unliquidated damage, and encompassed within this right is the opportunity to a fair post-default inquest at which both the plaintiff and the defendant can participate in the proceedings by cross-examining witnesses and introducing evidence on their own behalf. *Payne v. Dewitt, Okla.*, 995 P.2d 1088 (1999).

A default declaration, imposed as a discovery sanction against a defendant, cannot extend beyond saddling defendant with liability for the harm occasioned and for imposition of punitive damages, and the trial court must leave to a meaningful inquiry the quantum of actual and punitive damages, without stripping defendant of basic forensic devices to test the truth of plaintiff's evidence. *Payne v. Dewitt, Okla.*, 995 P.2d 1088 (1999).

Fracture of two toes required expert medical testimony as to whether such injury was permanent so as to allow damages for permanent injury, future pain, and future medical treatment on default judgment, and such testimony was not


In a tort action founded on an unliquidated claim for damages, a defaulting party is deemed to have admitted only plaintiff's right to recover, so that the court is without authority or power to enter a judgment fixing the amount of recovery in the absence of the introduction of evidence. *Graves v. Walters*, Okla.App., 534 P.2d 702 (1975).

Presumptions which ordinarily shield judgments from collateral attacks were not applicable on motion to vacate a small claim default judgment on ground that court assessed damages on an unliquidated tort claim without first hearing any supporting evidence. *Graves v. Walters*, Okla.App., 534 P.2d 702 (1975).

Rule that default judgment fixing the amount of recovery in absence of introduction of supporting evidence is void and not merely erroneous or voidable obtains with regard to exemplary as well as compensatory damages. *Graves v. Walters*, Okla.App., 534 P.2d 702 (1975).

Where liability of father for support of minor daughter and extent of such liability and amount of attorney's fees to be allowed was dependent on facts, rendering of final judgment by trial court requiring father to pay $25 monthly for support of minor until minor should reach age 18 and $100 attorney's fees without having heard proof thereof in support of allegations in petition was error. *Ross v. Ross*, Okla., 201 Okla. 174, 203 P.2d 702 (1949).

Refusal to render default judgment against codefendant for want of answer was not error, since defendants and court treated answer of defendant on file as having been filed on behalf of both defendants, and since plaintiff could not recover without offering proof of damages and offered no such proof. *Thomas v. Williams*, Okla., 173 Okla. 601, 49 P.2d 557 (1935).

Under R.L.1910, §§ 4779, 5130 (see, now, this section and § 2007 of this title), allegation of value, or amount of damages stated in petition, were not


If you or anybody you know has a default judgment, go to the courthouse and check the record. If they failed to prove up their claim—that default judgment is void ab initio subject to vacation without time limitation!

The really big deal, the real issue in void judgments is, tah, dum, de dum, SUBJECT MATTER JURISDICTION!!!! Remember, subject matter can never be presumed, never be waived, and cannot be constructed even by mutual consent of the parties. Subject matter jurisdiction is two part: the statutory or common law authority for the court to hear the case and the appearance and testimony of a competent fact witness, in other words, sufficiency of pleadings.

Even if a court (judge) has or appears to have subject matter jurisdiction, subject matter jurisdiction can be lost. Major reason why subject matter jurisdiction is lost:

(1) fraud upon the court, *In re Village of Willowbrook*, 37 Ill.App.3d 393 (1962)

(2) a judge does not follow statutory procedure, *Armstrong v Obucino*, 300 Ill 140, 143 (1921),

(3) unlawful activity of a judge or undisclosed conflict of interest. Code of Judicial Conduct,

(4) violation of due process, *Johnson v Zerbst*, 304 U.S. 458, 58 S.Ct. 1019 (1938); *Pure Oil Co. v City of Northlake*, 10 Ill.2d 241, 245, 140 N.E.2d 289 (1956); *Hallberg v Goldblatt Bros.*, 363 Ill 25 (1936),


(7) where no justiciable issue is presented to the court through proper pleadings, *Ligon v Williams*, 264 Ill.App.3d 701, 637 N.E.2d 633 (1st Dist. 1994),

(8) where a complaint states no cognizable cause of action against that party, *Charles v Gore*, 248 Ill.App.3d 441, 618 N.E. 2d 554 (1st Dist 1993),

(9) where any litigant was represented before a court by a person/law firm that is prohibited by law to practice law in that jurisdiction,

(10) when the judge is involved in a scheme of bribery (the Alemann cases, *Bracey v Warden*, U.S. Supreme Court No. 96-6133 (June 9, 1997),

(11) where a summons was not properly issued,

(12) where service of process was not made pursuant to statute and Supreme Court Rules, *Janove v Bacon*, 6 Ill.2d 245, 249, 218 N.E.2d 706, 708 (1955),

(13) where the statute is vague, *People v Williams*, 638 N.E.2d 207 (1st Dist. 1994),

(14) when proper notice is not given to all parties by the movant, *Wilson v. Moore*, 13 Ill.App.3d 632, 301 N.E.2d 39 (1st Dist. 1973),

(15) where an order/judgment is based on a void order/judgment, *Austin v. Smith*, 312 F.2d 337, 343 (1962);*English v English*, 72 Ill.App.3d 736, 393 N.E.2d 18 (1st Dist. 1979), or


**SUMMARY OF THE LAW OF VOIDS**

Before a court (judge) can proceed judicially, jurisdiction must be complete consisting of two opposing parties (not their attorneys - although attorneys can enter an appearance on behalf of a party, only the parties can testify and until the plaintiff testifies the court has no basis upon which to rule judicially), and the two halves of subject matter jurisdiction = the statutory or common law authority the action is brought under (the theory of indemnity) and the
testimony of a competent fact witness regarding the injury (the cause of action). If there is a jurisdictional failing appearing on the face of the record, the matter is void, subject to vacation with damages, and can never be time barred. A question which naturally occurs: "If I vacate avoid judgment, can they just come back and try the case again?" Answer: A new suit must be filed and that can only be done if within the statute of limitations.

"Lack of jurisdiction cannot be corrected by an order nunc pro tunc. The only proper office of a nunc pro tunc order is to correct a mistake in the records; it cannot be used to rewrite history." E.g., Transamerica Ins. Co. v. South, 975 F.2d 321, 325-26 (7th Cir. 1992); United States v. Daniels, 902 F.2d 1238, 1240 (7th Cir. 1990); King v. Ionization Int'l, Inc., 825 F.2d 1180, 1188 (7th Cir. 1987). And Central Laborer's Pension and Annuity Funds v. Griffee, 198 F.3d 642, 644(7th cir. 1999).

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http://mysite.verizon.net/~vze2snju/void/detailsvoid.htm

http://mysite.verizon.net/~vze2snju/void/details4.htm

SECTION ONE: Secrets of the legal industry

We have a two-tiered court system. In our system, we have supreme courts and courts of inferior jurisdiction. When we were children and learning in school, we were instructed that there are three branches of government, the legislative, the executive, and the judicial. What we were not told was that courts of inferior jurisdiction, regardless of their claimed origin such as The United States Constitution Article Three, Section one, can not be presumed to act judicially.

Most courts of inferior or limited jurisdiction have no inherent jurisdictional authority, no inherent judicial power whatsoever. Courts of limited jurisdiction
are empowered by one source: SUFFICIENCY OF PLEADINGS - meaning one of the parties appearing before the inferior court must literally give the court its judicial power by completing jurisdiction. Federal courts are courts of limited jurisdiction, and may only exercise jurisdiction when specifically authorized to do so.


OKLAHOMA MAY SAY IT BEST! =

We recognize the district court, in our unified court system, is a court of general jurisdiction and is constitutionally endowed with "unlimited original jurisdiction of all justiciable matters, except as otherwise provided in this Article," Article 7, Section 7, Oklahoma Constitution.

However, this "unlimited original jurisdiction of all justiciable matters" can only be exercised by the district court through the filing of pleadings which are sufficient to invoke the power of the court to act. The requirement for a verified information to confer subject matter jurisdiction on the court and empower the court to act has been applied to both courts of record and not of record.

We determine that the mandatory language of 22 O.S. 1981 § 303 [22-303], requiring endorsement by the district attorney or assistant district attorney and verification of the information is more than merely a "guaranty of good faith"
of the prosecution. It, in fact, is required to vest the district court with subject matter jurisdiction, which in turn empowers the court to act. Only by the filing of an information which complies with this mandatory statutory requirement can the district court obtain subject matter jurisdiction in the first instance which then empowers the court to adjudicate the matters presented to it.


To invoke the jurisdiction of the court under the declaratory judgments act there must be an actual, existing justiciable controversy between parties having opposing interests, which interests must be direct and substantial, and involve an actual, as distinguished from a possible, potential or contingent dispute. Gordon v. Followell, 1964 OK 74, 391 P.2d 242.

To be "justiciable," the claim must be suitable for judicial inquiry, which requires determining whether the controversy (a) is definite and concrete, (b) concerns legal relations among parties with adverse interests and (c) is real and substantial so as to be capable of a decision granting or denying specific relief of a conclusive nature."Dank v. Benson, 2000 OK 40, 5 P.3d 1088, 1091. See also, 12 O.S. §1651. See also, Easterwood v. Choctaw County District Attorney, 45 P.3d 436, 2002 OK CIV APP 41 (Okla. App. 01/11/2002)).

Another well spoken authority: On the date specified in the notice of hearing, all parties may appear and be heard on all matters properly before the court which must be determined prior to the entry of the order of taking, including the jurisdiction of the court, the sufficiency of pleadings, whether the petitioner is properly exercising its delegated authority, and the amount to be deposited for the property sought to be appropriated. See City of Lakeland v. William O. Bunch et al.. (04/03/74) 293 So. 2d 66.

I hope by now, everyone understands that a court DOES NOT GET ITS JURISDICTIONAL AUTHORITY FROM THE FLAG THAT IS POSTED!!!! Court's of inferior or limited jurisdiction get their authority from ONE
SOURCE AND ONLY ONE SOURCE = pleadings sufficient to empower the
court to act meaning one of the parties must give the court its power to act by
way of written and oral argument (the parties NOT THEIR ATTORNEYS
MUST DO THIS!). The following are comments by Mark Ferran. Many
probably think Mark is a bit too harsh in his dissertation on the gold-fringed
flag. I asked Mark's permission to reprint the information here and while
Mark's tone may be harsh, I've been at the receiving end of far too many calls
from some poor soul desperately seeking my help in literally the last few hours
before their eviction!

Let me give you some insights into the Gold-Fringed Flag fixation that some
people have. I attended Law School and did very well as a law-student
(graduated with high honors). Law students are given lots of law-books to read,
and some of these students actually read those books. You yourselves can buy
and read these books. But none of these books include any discussion of the
nature of the Flag types which may exist, nor any Flag Protocols, symbology,
nor anything else about the American Flag except some cases that deal with
First Amendment Rights: Can students be forced to salute the Flag in school?
Can people be punished for burning flags, etc. So, for the most part, the
symbology (e.g., gold fringes) on an American Flag means nothing at all to any
Attorney or Judge.

"The nitwits have amongst themselves this strange superstition that the
presence of a gold trim on a courtroom's flag somehow imposes some different
sort of law than what's expected -- although they cannot get their stories
straight on whether it's martial law or maritime law, the two being very
different. They have absolutely no legal authority for any of this and seem to be
making it up as they go along. They don't seem to have noticed that the gold
trim appears only on INDOOR flags, which are made of fairly flimsy material
and would hang limp and drab without either breeze or sunlight indoors, so the
gold trim provides some esthetic compensation for the lack of sunlight and
breeze, and that all OUTDOOR flags, even the ones at military bases and on
ships, don't have this fringe, because outdoor flags are made of heavier fabric
and the wind and damp would soon ruin a fringe. Back in 1925 the US
Attorney-General relied on the opinion of the predecessor to the US Army's
Institute of Heraldry that the fringe was not an addition or alteration of the flag,
and therefore not illegal, and moreover had no symbolic meaning. Currently the
Institute of Heraldry and the non-government Flag Research Center both issue
fact sheets debunking this militia myth about the fringe on the flag. There
apparently has NEVER been a successful challenge to a court's decision or
jurisdiction based on the absence of a correct flag or the presence of an "incorrect" flag in the courtroom. 

You can change the flag displayed in the Courtroom every five minutes, or once an hour, all day long. That won't change the behavior of the Judge, nor will it affect the finality or gravity of the result of the proceeding. Nobody on the other side of the "BAR" cares at all what the flag looks like or whether it has a gold fringe on it.

None within the "Law Profession", whose primary interest is extracting money from the general population, cares anything at all about how the Judge or the Court room is dressed, except to the extent that appearances make a good impression on the slobs who are paying attorneys for "Justice." Whitewashed Tombs are more saleable than tombs appearing in their natural state of decay and rot and stench. If any typical attorney ever even noticed a gold-fringe on a flag in the court room, it would mean nothing more to him than a suggestion of what he was there For (Money) after all, and he would wish the fringe was real gold so he could cut a gold tassle or two off it during an intermission.


The idea that only "IF the fringe is not there you can demand that you be under Constitutional Law" but that if a fringe is present in the room, you need not bother to demand respect for y our rights under the Constitution and the Laws is ABSOLUTELY INSANE AND SELF-DESTRUCTIVE.

Any private citizen who fixates upon the fringes upon the flag in a court room, or whether the Judge is wearing a whig or not, INSTEAD OF HIS OWN LEGAL RIGHTS UNDER THE WRITTEN LAWS AND THE CONSTITUTION, is simply a FOOL who is probably not worthy to live as a free man in a republic in the first place. That is certainly the view that many judges and attorneys will take after being bothered or harassed by the "flag-
fringe" maniacs. Slaves always aspired to learn to Read so that they might understand and claim the rights of free men under written laws, instead of only being able to recognize only the symbols of the authority of their masters. Fools who can read, but who ignore written laws, choosing instead to fixate on symbols, are practically inviting their own enslavement. Judges and attorneys against them will take advantage of their foolish fixations to strip them of rights and property that they might have held onto if only they had instead fixated upon the Law, the Facts, and the Merits of their claims or defenses: In *G.D. Fowler v. State* (Ark.App 1999), 67 Ark.App 114, 992 SW2d 804, "the defendant's objection to the fringed flag was emphasized by the prosecution during cross-examination, and similarly during the cross-examination of the defendant's fellow militia group members, and on appeal the exploitation of the defendant's objection to the courtroom flag was held to be so prejudicial, because it was calculated to arouse the jury's hostility to the defendant, that the conviction was overturned) http://www.adl.org/mwd/sussman.doc

Some people truly deserve to be convicted of offenses, or to have their completely stupid lawsuits thrown out of Courts of Law, and when they are disposed of in that proper manner, some of those will try to blame the result on things like the fringes of the flag: ("The complaint will be dismissed not because this court operates under the regal splendor of a gold fringed flag but because the complaint is legally absurd.") *Ch.H. Cass v. R.J. Reynolds Tobacco Co* (MDNC unpub 10/1/98) 82 AFTR2d 6967

You can heed my warnings (www.billstclair.com/ferran ), and/or the Warnings from the Courts themselves, or you can continue to fixate on symbology and "fringe" ideas. It won't hurt me immediately if you destroy yourselves, but the more flag-fixated people you lead to slaughter, the more emboldened the lawless among our Judges and Prosecutors will become. So, consider the impact that your self-destruction will have upon others before you choose your fixation.

Consider the slaughter that has already happened to flag-fixated fools in the Courts:

"XIII. The Flag Issue: A current popular argument is that the gold fringed flag indicates the admiralty jurisdiction of the court. Naturally, pro ses have made this argument and lost:

1. *Vella v. McCammon*, 671 F.Supp. 1128, 1129 (S.D. Tex. 1987) (the argument has "no arguable basis in law or fact")
"preposterous claim")


http://freedomlaw.com/dismyth.html

"Judge Wilbert's jurisdiction is in no way predicated on ... the design of the US flag." Haskins v. Wilbert (D Kan unpub 11/5/97) See, also:

http://www.adl.org/mwd/sussman.doc

See also: "BRITISH ACCREDITED REGISTRY" at http://home.hiwaay.net/~becraft/BAR.html

We have a common law court system. There are two basic forms of law in the world - code law and common law. Code law means that the law as written is the law. Unfortunately, code has to be continually expanded by legislative authority. The so-called Internal Revenue Service Code is an attempt to impose code law over common law - the results are disasters! Common law means that you can't read any statute, rule, or law for that matter any constitutional article and tell what it means on its face. A common law system means that what any statute, rule, law, or constitutional law means is determined by the highest court of competent jurisdiction in their most recent ruling. In America, only Louisiana uses a code law system.

DEVELOPMENT OF THE COMMON-LAW COURT SYSTEM IN AMERICA

The Supreme Court is a common-law court that operates in a system that has little "federal common law." Yet its common-law nature is important to the Court's functioning as a constitutional arbiter. "Common law is a system of law made not by legislatures but by courts and judges. Although often called "unwritten law," the phrase actually refers only to the source of law, which is presumed to be universal custom, reason, or "natural law." In common law, the substance of the law is to be found in the published reports of court decisions. Two points are critical to the workings of a common-law system. First, law emerges only through litigation about actual controversies. Second, precedent guides courts: holdings in a case must follow previous rulings, if the facts are identical. This is the principle of stare decisis. But subsequent cases can also change the law. If the facts of a new case are distinguishable, a new rule can emerge. And sometimes, if the grounds of a precedent are seen to be wrong, the holding can be overruled by later courts.
When the Constitution was drafted, American society was infused with common-law ideas. Common law originated in the medieval English royal courts. By 1776, it had been received in all the British colonies. The revolutionary experience heightened Americans' adherence to common law, especially to the idea that the principle embodied in the common law controlled the government. While there is no express provision in the Constitution stating that the Supreme Court is a common-law court, Article III divides the jurisdiction of federal courts into law (meaning common law), equity, and admiralty. The Philadelphia Convention of 1787 rejected language that would limit federal jurisdiction to matter controlled by congressional statute. Thus the Constitution implicitly recognizes the Supreme Court as a common-law court, as does the Seventh Amendment in the Bill of Rights.

The Constitution left open the question whether there was a federal common law. The Supreme Court first held, in *United States v. Hudson and Goodwin* (1812), that there is no federal common law of crimes, and then, in *Wheaton v. Peters* (1834), that there is no federal civil common law. But in *Swift v. Tyson* (1842), the Court permitted lower federal courts to decide commercial law questions on the basis of "the general principles and doctrines of commercial jurisprudence" thus opening the door to later growth of a general federal common law. A century later, the Court put a stop to this development in *Erie Railroad v. Thompkins* (1938) by declaring Swift unconstitutional. (Yet, at the same time, it acknowledged the existence of bodies of specialized federal common law, such as, for example, it refuses to render advisory opinions, waiting instead for litigants to bring issues before it. Precedent shapes the Court's power of judicial review; because of it, any ruling of the Court is a precedent for similar cases. Thus if one state's law is held unconstitutional, all similar statutes in other states are unconstitutional a point the Court was obliged to underscore forcibly in *Cooper v. Aaron* (1958) in the face of intransigent southern resistance to the Court's holding in *Brown v. Board of Education* (1954).

The Fourteenth Amendment

Under Article I, section 2 of the Constitution, a slave had been counted as three-fifths of a person for purposes of representation. Southern states expected a substantial increase in their representation in the House of Representatives after the Civil War. The Union, Having won the war, might lose the peace. Before the war, southern states suppressed fundamental rights, including free speech and press in order to protect the institution of slavery. Though the Supreme Court had ruled in 1833 in *Baron v. Baltimore* that guarantees of the
Bill of Rights did not limit the states, many Republicans thought state officials were obligated to respect those guarantees. The Fourteenth Amendment prohibited states from abridging privileges and immunities of citizens of the United States and from depriving persons of due process of law or equal protection of the laws. Early interpretations of the Fourteenth Amendment drastically curtailed the protection afforded by the amendment. Decisions such as *Twinin v. New Jersey* in 1908 and *Gitlow v. New York* in 1925 expanded the Fourteenth Amendment to the Bill of Rights meaning that Federal protections applied to protect the individual from trespass on God-given rights by states. Supreme Court decisions have also brought offense to rights done under color of law by private persons within reach of Federal protection. Source - The Oxford Companion To The Supreme Court of The United States

The essence of the Fourteenth Amendment in a nutshell

The Constitution of the United States was written to protect us from intrusion on our God Given Rights by the Federal Government. The Fourteenth Amendment was necessary to protect us from intrusion on our God Given Rights by state governments, political subunits, and individuals who act under color of law. The Fourteenth Amendment, contrary to what some believe takes no rights away. In fact, the Fourteenth Amendment is one of the most valuable legal tools we have at our disposal. Some Patriots have been misled with an argument that the Fourteenth Amendment makes them inferior citizens. This propaganda originates from the belief that Lincoln "enslaved us all" by declaring martial law. In truth and reality, Lincoln's order invoking martial law was revoked by then Chief Justice Taney. Roger Brooke Taney was fingered as a bad guy as a result of the Dred Scott decision. Taney, like many others was a product of history. Taney's ruling in Scott was based on the fact that Taney was a strict constructionist, believing that the Constitution pretty well says what it says and was reticent to be too creative with Constitutional interpretation. Simply put, Taney believed slaves were property and maintained the Constitution's protection of private property ownership warranted a constitutional amendment if slaves were to be granted rights as citizens. Taney's revocation of Lincoln's order of marshall law fomented a Constitutional crisis in as much as Lincoln regarded Taney as a usurper of Presidential power claiming Taney had no authority to revoke his declaration of marshall law absent a case being presented to the court. After Lincoln's death, the Supreme Court removed all doubt in *Ex Parte Milligan*, 71 U.S. 2 (1866), ending any presumption that Lincoln had "made us all inferior citizens." The holding in Milligan = "The Constitution was not suspended in time of emergency. The Constitution was a law for rulers and people, equally in time of
war and peace; therefore, the military trial of civilians which violated constitutional guarantees of indictment by grand jury and public trial by an impartial jury was impermissible where the civil courts remained open. Neither the president nor Congress can authorize the trial of civilians by military commission as long as the civil courts were open." Patriots due ill to the cause and obstruct justice for themselves by buying into the falsehoods surrounding the Fourteenth Amendment.

UNITED STATES CONSITUTIONAL AMENDMENT VII = In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the Untied States, than according to the rules of the common law.

Federal courts, in adopting rules, are not free to extend the judicial power of the Untied States described in Article III of the Constitution. Willy v. Coastal Corp., 503 U.S. 131, 135 (1992). Rule 28A(i) allows courts to ignore this limit. If we mark an opinion as unpublished, Rule 28A(i) provides that is not precedent. Though prior decisions may be well-considered and directly on point, Rule 28A(i) allows us to depart from the law set out in such prior decisions without any reason to differentiate the cases. This discretion is completely inconsistent with the doctrine of precedent; even in constitutional cases, courts "have always required a departure from precedent to be supported by some 'special justification.' "United States v. International Business Machines Corp., 517 U.S. 843, 856 (1996), quoting Payne v. Tennessee, 501 U.S. 808, 842 (1991) (Souter, J., concurring). Rule 28A(i) expands the judicial power beyond the limits set by article III by allowing us complete discretion to determine which judicial decisions will bind us and which will not. Insofar as it limits the precedential effect of our prior decisions, the Rule is therefore unconstitutional. Anastasoff v. United States of America 223 F.3d 898 (8th Cir. 2000).

The real law is found in the annotated statutes: The importance of annotated law: (1). It is organized. (2). It is abbreviated (you don't need to read the whole case) (3). The "holdings" define the real law. Examples of holdings:

Debtor, as natural person who was obligated to pay debt to hospital for services provided in connection with her kidney infection, was "consumer" within meaning of the Fair Debt Collection Practices Act (FDCPA). Creighton v. Emporia Credit Service, Inc., E.D.Va.1997, 981 F.Supp. 411.
Patient who had received medical services on credit, and who was primarily responsible for payment of account at medical center, qualified as "consumer" under the Fair Debt Collection Practices Act (FDCPA). *Adams v. Law Offices of Stuckert & Yates*, E.D.Pa.1996, 926 F.Supp. 521.

Fair Debt Collection Practices Act, establishing liability of debt collector who fails to comply with the Act "with respect to any person," does not limit recovery to "consumers," and thus would not preclude recovery by person to whom debt collector sent letter seeking to collect debt of such person's deceased father even if such person were not a consumer; but, in any event, such person was a "consumer" when collectors admittedly demanded payment of debt from him. *Dutton v. Wolhar*, D.Del.1992, 809 F.Supp. 1130.


Workbook assignment: Visit a law library. Find the Federal Annotated Statutes and your State's annotated statutes or code. Copy an annotated section from each. Write a summary of the real law regarding the statute.

There are a two types of jurisdiction relating to people. Personal jurisdiction is lawfully exercised over a defendant if the person lives in a jurisdiction, operates a business in a jurisdiction, owns property in a jurisdiction, or commits an injury in a jurisdiction and has had notice and opportunity free of fraud or mistake (is in receipt of service and has a copy of the petition, claim, or complaint). If these elements are complete, personal jurisdiction CANNOT BE DENIED. Even if these elements are lacking, personal jurisdiction can be waived by appearance, excepting a person, not represented by counsel entering a special appearance for the purpose of challenging the court's personal jurisdiction. Subject matter jurisdiction is the court's power to hear and determine cases of the general class or category to which proceedings in question belong; the power to deal with the general subject involved in the action. Subject matter jurisdiction can never be waived, cannot attach by mutual consent of the parties, or through lapse of time or course of events other than sufficient pleadings. Once established, subject matter jurisdiction CAN be lost. When subject matter jurisdiction is challenged, the party asserting that the court has subject matter jurisdiction has the burden of showing that it exists on the record. Once the court has knowledge that subject matter is lacking, the court (meaning the judge) has no discretion but to dismiss the action. Failure to dismiss means that the court is proceeding in clear absence of all jurisdiction.
and subjects the judge to suit. Contemplation of subject matter jurisdiction harkens to the memory of Vince Lombardi, who when asked if winning was everything replied, "winning is the only thing." Personal jurisdiction is not usually an issue, but subject matter jurisdiction is always, always an issue! Subject matter jurisdiction is not everything, it's the only thing! Incidentally, in rem is the power of a court over a thing so that its jurisdiction is valid against the rights of every person having an interest in the thing; quasi in rem gives the court jurisdiction over a property interest but only to the limit of the interest in the property and not the property entirely.

NOTE: Some contracts have a "forum selection clause" stating that if there is a controversy it will be resolved according to the law of a certain state. Is clause enforceable? Not if the clause is expressed in fine print, placed in the contract to avoid litigation, or if the forum selection clause could not have been disputed without impunity as part of a freely negotiated contract. See *Johnson and Johnson, v. Holland America Line-Westours, Inc*, 557 N.W.2d 475, Forum selection clause must be reasonable communicate terms and be fundamentally fair *Deiro v. American Airlines, Inc.*, 816 F.2d 1360, 1364 (9th Cir. 1987). The forum selection clause must be "fundamentally fair." *Shute*, 499 U.S. at 595, In re: Hodes, 858 F.2d at 908, and *Shankles v. Costa Armatori*, S.P.A., 722 F.2d 861, 866 (1st Cir. 1983)

Attorneys can't testify. Statements of counsel in brief or in oral argument are not facts before the court.

This finding of a continuing investigation, which forms the foundation of the majority opinion, comes from statements of counsel made during the appellate process. As we have said of other un-sworn statements which were not part of the record and therefore could not have been considered by the trial court: "Manifestly, [such statements] cannot be properly considered by us in the disposition of [a] case." *United States v. Lovasco* (06/09/77) 431 U.S. 783, 97 S. Ct. 2044, 52 L. Ed. 2d 752, Under no possible view, however, of the findings we are considering can they be held to constitute a compliance with the statute, since they merely embody conflicting statements of counsel concerning the facts as they suppose them to be and their appreciation of the law which they deem applicable, there being, therefore, no attempt whatever to state the ultimate facts by a consideration of which we would be able to conclude whether or not the judgment was warranted. *Gonzales v. Buist*. (04/01/12) 224 U.S. 126, 56 L. Ed. 693, 32 S. Ct. 463. No instruction was asked, but, as we have said, the judge told the jury that they were to regard only the evidence admitted by him, not statements of counsel, *Holt v. United States*, (10/31/10)
218 U.S. 245, 54 L. Ed. 1021, 31 S. Ct. 2, Care has been taken, however, in summoning witnesses to testify, to call no man whose character or whose word could be successfully impeached by any methods known to the law. And it is remarkable, we submit, that in a case of this magnitude, with every means and resource at their command, the complainants, after years of effort and search in near and in the most remote paths, and in every collateral by-way, now rest the charges of conspiracy and of gullibility against these witnesses, only upon the bare statements of counsel. The lives of all the witnesses are clean, their characters for truth and veracity un-assailed, and the evidence of any attempt to influence the memory or the impressions of any man called, cannot be successfully pointed out in this record. Telephone Cases.Dolbear v. American Bell Telephone Company, Molecular Telephone Company v. American Bell Telephone Company. American Bell Telephone Company v. Moleecualar Telephone Company, Clay Commercial Telephone Company v. American Bell Telephone Company, People's Telephone Company v. American Bell Telephone Company, Overland Telephone Company v. American Bell Telephone Company., (PART TWO OF THREE) (03/19/88) 126 U.S. 1, 31 L. Ed. 863, 8 S. Ct. 778. Statements of counsel in brief or in argument are not sufficient for motion to dismiss or for summary judgment, Trinsey v. Pagliaro, D. C. Pa. 1964, 229 F. Supp. 647. Factual statements or documents appearing only in briefs shall not be deemed to be a part of the record in the case, unless specifically permitted by the Court - Oklahoma Court Rules and Procedure, Federal local rule 7.1(h).

Links of Value

http://mysite.verizon.net/~vze2snju/void/links.htm

For legal research go to:

1. Dictionary with pronunciations:
http://www.m-w.com/home.htm

2. Legal Dictionary online:
http://dictionary.law.com/
3. Fair Debt Collection Practices Act:
http://www4.law.cornell.edu/uscode/15/ch41schV.html

4. USC Fair Credit Billing Act:
http://www4.law.cornell.edu/uscode/15/1666.html

5. State Code Publication, limited number of states:
http://www.michie.com

6. Versus Law - search for court cases, $14.95 per mo. plan will serve most people:
http://versuslaw.com

7. Cornell University Law Library - search for court cases, codes and more:
http://www4.law.cornell.edu

http://jail4judges.org

9. Meet Richard Cornforth - video
Meet Richard Cornforth - Video

10. See "Does the judge..." then "#3"- disqualify for active participation in "THE BAR!"- Wat'cha think?!
Federal Judge's checklist for disqualification

Code of Conduct for Federal Judges

12. Mandatory Judicial Notice under FRCivP Rule 201 - Judges must follow the rules
Mandatory Judicial Notice under FRCivP Rule 201

13. Supervoid Memoranda laid out by State
Void Judgements By State

14. Order your Debt Collection needs here.
Buy your debt collection needs, including affidavits and monthly statements

15. Looking for something or someone (debt collector, affiant or notary)
Start your searching here

16. Tracking new and intriguing Web sites for the legal profession.
http://www.legaline.com/lawsites.html

17. Fastcase Unveils 'Largest Free (1st 24hours free, billable thereafter) Law Library.'
Fastcase unveiled an even larger free library of cases, statutes, regulations, court rules
and legal forms.
http://www.fastcase.com

18. The Public Library of Law it claims in an announcement to be "the most comprehensive free resource for legal research online."
http://www.plol.org

19. Paralegal Research Advocates."
http://www.paralegalresearchadvocates.com

http://www.justia.com

Statutes and Cases of Interest

1. What the U.S. Supreme Court has said Standing is.
U.S. Supreme Court On Standing

2. What brought down Leahman according to 9th Circuit Court of Apppeals.
Predatory Lending

3. McKee v. IRS - Code too Confusing, Court Reverses, McKee Wins. Code too Confusing. ( Take notice: Judges Order is set as "Not for Publication." ) Paul Harvey on McKee Win

4. Ballard v. Commissioner - Supreme Court takes 25+ pages to say the want of Findings of Facts and Conclusions of Law deny access to Court and Deny due Process, ergo judgment is void.

5. MERS declared a Sham by the 11th Judicial Circuit Court (in and for Miami & Dade County, Florida), MERS =’s Mortgage Electronic Registry Service.

Videos that may be Interest

1. Rae & Loma taking on Douglas County (Oregon) Council over Improper IRS property Liens,

Part 1 of 5 - Regular Meeting 08/08/2007
Start time: 7:43 to 39:04 end
Part 2 of 5 - Regular Meeting 08/29/2007
Start time: 23:37 to 27:14 end
Part 3 of 5 - Special Tax Liens Meeting 09/07/2007
Full meeting
Part 4 of 5 - Regular Meeting 11/07/2007
Articles Written for Publication

764 Judges Oklahoma Sued By Citizen Acting as Private Attorney General Under RICO

Citizens Criminal Complaint

Colorado Housewife Sues Wells Fargo Bank Under RICO as Private Attorney General

Tax Lien Fraud: "... see how deep the rabbit hole goes ..." and Companion Video

"... see how deep the rabbit hole goes ..." -- Continued
and Companion Video Links

"... see how deep the rabbit hole goes ..." -- the Saga Continues

Debt Collection Industry Collapse Approaches

SHARPEN YOUR TEETH, THE LEGAL INDUSTRY HOUNDS ARE AFOOT or AHRC.com

Void Judgments Memo by: Gary Bryant

Void Judgments Case List by: Richard Cornforth

Supervoid - memoranda by STATE! keep handy! by: J'Accuse Ltd.

The real issue in Void Judgments is: SUBJECT MATTER JURISDICTION! by: Jeff

Title 18 USC - Criminal - is a nulity and has been since 1947/1948:

Tax Cuts Explained!

Ever Wonder How DOJ goes about winning Tax Cases?

One person writes to their Congressman and Senator demanding to know the law/statute that authorizes IRS to seize real property and money. Good template for a letter writing campagne. May be the only route to take to stop the IRS's campagne of domestic terrorism.
One person presses IRS to settle their financial claim for IRS violation of their Rights. **Another good template for a letter writing campaign**. If you cost them more than they can get from you, they just may leave you alone.

**Radio Shows Worth Listening To!**

Randy Kelton - filing criminal complaints - emphasis Texas. **show name**: "Rule of Law":

- Monday 9pm until 11pm - Eastern Time Zone,
- Thursday 9pm until 11pm - Eastern Time Zone,
- Friday 9pm until 1am - Eastern Time Zone,
- [http://ruleoflawradio.com](http://ruleoflawradio.com)
- Lots of call-ins, lots of stories of success.

Tony Davis - Was the codification of Title 18 USC - Criminal Law (1947-1948) actually passed by both Houses of Congress or is it a major fraud on the American Public? **show name**: "Solutions in Criminal Law":

- Tuesday 9pm until 11pm - Eastern Time Zone,
- [http://www.ruleoflawradion.com](http://www.ruleoflawradion.com) **(Archives Only At This Time)**
- Lots of information, lots of stories of court corruption.

**Organizations of Particular Value**

**American Justice Foundation**

We the People of America Seek Justice Together for Future Generations.

American Justice Foundation is a Non-Profit Trust Working to Preserve Your God-Given Rights Through

Public Legal Education, Legal Reform, and Government Accountability.
Interesting Court Filings Found

Judicial Immunity

Parallel State and Federal Litigation

Private Attorneys General

DOJ Confesses to 40 Points of IRS, Courts, & DOJ Wrong Doing

Assist Sherry Jackson, and others, by providing the political affect of your "criminal complaint"

Office of the Comptroller of the Currency on NA's in State Court

US Supreme Court on NA's in State Court

California State Criminal Complaint - Generic

Motion to Dismiss - Failure to State a Claim, combines Judicial Cannons, Rules of Professional Conduct for Attorneys and rules of procedure.

Great Example of Political Spin:

'Remus Reid, horse thief, sent to Montana Territorial Prison 1885, escaped 1887, robbed the Montana Flyer six times. Caught by Pinkerton detectives, convicted and hanged in 1889.'

A Senator's Spin on this relative:

'Remus Reid was a famous cowboy in the Montana Territory. His business empire grew to include acquisition of valuable equestrian assets and intimate dealings with the Montana railroad. Beginning in 1885, he devoted several years of his life to government service, finally taking leave to resume his dealings with the railroad. In 1887, he was a key player in a vital investigation run by the renowned Pinkerton Detective Agency. In 1889,
Remus passed away during an important civic function held in his honor when the platform upon which he was standing collapsed.'

NOW THAT is how it is done! That's real SPIN.

- MONEY AND BANKING -

The banking system doesn't work the way most think!

A very simple, easy to understand, video shows you how it really works!

REMIC
- Real Estate Mortgage Investment Conduit -

REMIC - Herein Lies the Fraud, a hundred plus pages of it.

REMIC - Herein Lies the Fraud, a hundred plus pages of it.*

There are hundreds of these, if not thousands, containing mortgage notes that have been sold into these investment securities. Read them carefully and you will discover why the notes can never appear in a foreclosure case. (Something to keep in mind, the Note is not only evidence of a debt, IT IS THE DEBT. No Note, no Debt.)

**Foreclosure Fraud - Guide to Looking up Public Records for Fraud

-- More to come as it comes available --

Summary

Home

Resources for Marylanders

Void Judgments
Black's Law Dictionary, 6th Edition, defines a void judgment as follows:

"Void Judgment. One which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally."

A void judgment comes into being when there is not sufficiency of pleading to fully establish the court having subject matter jurisdiction. In other words, neither party has firmly set that the court has jurisdiction in the matter.

What this means to you is that practically all "debt judgments" handed down by the courts are in fact void judgments. They can be vacated (made to disappear).

It's not that hard, a little research, a little typing, paying a nominal court filing fee, and sit back and wait. Not much to it, is there?

The results you can produce are unbelievable, and you just didn't know you had the power to shake up this predatory industry, did you?

The debt collection industry collects billions of dollars from those who are unable to protect themselves and do it using void judgments. What a racket that is!

Now's the time to step up to the plate and get that void judgment vacated, disappeared. It's not hard, there's no pain, and frequently there is not a court appearance. (It would not be wise to count on "no" court appearance, you should always plan and prepare for it.) Neat, huh?

It's up to you, keep paying, or make them pay. Your choice!!

Oh, and a vacated judgment must, again must, be removed from your credit record.

http://mysite.verizon.net/~vze2snju/void/summary.htm
RESOURCES FOR MARYLANDer's

http://www.peoples-law.info/Home/PublicWeb  ---great searches

http://casesearch.courts.state.md.us/inquiry/processDisclaimer.jis

http://mdcourts.gov/

http://mlis.state.md.us/asp/web_statutes.asp

http://www.michie.com/maryland/lpext.dll?f=templates&fn=main-h.htm&2.0


*This is just a start, more will be added as time goes on.


void judgment

Elliot v. Piersol, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828):

Under Federal law which is applicable to all states, the U.S. Supreme Court stated that if a court is

"without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery
sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers."

[Elliot v. Piersol, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828)]

**World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980)**

“A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere. Pennoyer v. Neff, 95 U.S. 714, 732-733 (1878).”

[World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980)]

**Black's Law Dictionary, Sixth Edition, p. 1574:**

**Void judgment.** One which has has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally. Reynolds v. Volunteer State Life Ins. Co., Tex.Civ.App., 80 S.W.2d 1087, 1092. One which from its inception is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any manner or to any degree. Judgment is a "void judgment" if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process. Klugh v. U.S., D.C.S.C., 610 F.Supp. 892, 901. See also Voidable judgment.


**Authorities on Void Judgments:**

Void judgments are those rendered by a court which lacked jurisdiction, either of the subject matter or the parties. See:

Wahl v. Round Valley Bank, 38 Ariz. 411, 300 P.955 (1931)
Tube City Mining & Milling Co. v. Otterson, 16 Ariz. 305, 146 P. 203 (1914)

A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power...
to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court. See Long v. Shorebank Development Corp., 182 F.3d 548 (C.A. 7 Ill. 1999)

A void judgment is one which, from its inception, was a complete nullity and without legal effect. See Lubben v. Selective Service System Local Bd. No. 27, 453 F.2d 645, 14 A.L.R. Fed. 298 (C.A. 1 Mass. 1972)

A void judgment is one which from the beginning was complete nullity and without any legal effect. See Hobbs v. U.S. Office of Personnel Management, 485 F.Supp. 456 (M.D. Fla. 1980).

Void judgment is one that, from its inception, is complete nullity and without legal effect. Holstein v. City of Chicago, 803 F.Supp. 205, reconsideration denied 149 F.R.D. 147, affirmed 29 F.3d 1145 (N.D. Ill. 1992).


A void judgment is one which, from its inception, was a complete nullity and without legal effect, Rubin v. Johns, 109 F.R.D. 174 (D. Virgin Islands 1985).

A void judgment is one which, from its inception, is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind the parties or to support a right, of no legal force and effect whatever, and incapable of enforcement in any manner or to any degree. Loyd v. Director, Dept. of Public Safety, 480 So.2d 577 (Ala.Civ.App. 1985). A judgment shown by evidence to be invalid for want of jurisdiction is a void judgment or at all events has all attributes of a void judgment, City of Los Angeles v. Morgan, 234 P.2d 319 (Cal.App. 2 Dist. 1951).

Void judgment which is subject to collateral attack, is simulated judgment devoid of any potency because of jurisdictional defects, Ward v. Terriere, 386 P.2d 352 (Colo. 1963). A void judgment is a simulated judgment
void of any potency because of jurisdictional defects only, in the court rendering it and defect of jurisdiction may relate to a party or parties, the subject matter, the cause of action, the question to be determined, or relief to be granted, Davidson Chevrolet, Inc. v. City and County of Denver, 330 P.2d 1116, certiorari denied 79 S.Ct. 609, 359 U.S. 926, 3 L.Ed. 2d 629 (Colo. 1958).

Void judgment is one entered by court without jurisdiction of parties or subject matter or that lacks inherent power to make or enter particular order involved and such a judgment may be attacked at any time, either directly or collaterally, People v. Wade, 506 N.W.2d 954 (Ill. 1987).

Void judgment may be defined as one in which rendering court lacked subject matter jurisdiction, lacked personal jurisdiction, or acted in manner inconsistent with due process of law Eckel v. MacNeal, 628 N.E.2d 741 (Ill. App. Dist. 1993).

Void judgment is one entered by court without jurisdiction of parties or subject matter or that lacks inherent power to make or enter particular order involved; such judgment may be attacked at any time, either directly or collaterally People v. Sales, 551 N.E.2d 1359 (Ill.App. 2 Dist. 1990).

Res judicata consequences will not be applied to a void judgment which is one which, from its inception, is a complete nullity and without legal effect, Allcock v. Allcock, 437 N.E.2d 392 (Ill.App.3 Dist. 1982).

Void judgment is one which, from its inception is complete nullity and without legal effect In re Marriage of Parks, 630 N.E.2d 509 (Ill.App. 5 Dist. 1994).

Void judgment is one entered by court that lacks the inherent power to make or enter the particular order involved, and it may be attacked at any time, either directly or collaterally; such a judgment would be a nullity. People v. Rolland, 581 N.E.2d 907 (Ill.APp. 4 Dist. 1991).

Void judgment under federal law is one in which rendering court lacked subject matter jurisdiction over dispute or jurisdiction over parties or acted in manner inconsistent with due process of law or otherwise acted unconstitutionally in entering judgment, U.S.C.A. Const. Amend. 5, Hays v. Louisiana Dock Co., 452 N.E.2d 1383 (Ill App. 5 Dist. 1983).

A void judgment has no effect whatsoever and is incapable of confirmation or ratification, Lucas v. Estate of Stavos, 609 N.E.2d 1114,
rehearing denied, and transfer denied (Ind. App. 1 Dist. 1993).

Void judgment is one that from its inception is a complete nullity and without legal effect Stidham v. Whelchel, 698 N.E.2d 1152 (Ind. 1998).

Relief from void judgment is available when trial court lacked either personal or subject matter jurisdiction, Dusenberry v. Dusenberry, 625 N.E.2d 458 (Ind.App. 1 Dist. 1993).

Void judgment is one rendered by court which lacked personal or subject matter jurisdiction or acted in manner inconsistent with due process, U.S.C.A. Const. Amends. 5, 14, Matter of Marriage of Hampshire, 896 P.2d 58 (Kan. 1997)

Judgment is void if court that rendered it lacked personal or subject matter jurisdiction; void judgment is nullity and may be vacated at any time, Matter of Marriage of Welliver, 869 P.2d 653 (Kan. 1994).

A void judgment is one rendered by a court which lacked personal or subject matter jurisdiction or acted in a manner inconsistent with due process, In re. Estate of Wells, 983 P.2d 279, (Kan.App. 1999).

Void judgment is one rendered in absence of jurisdiction over subject matter or parties, 310 N.W.2d 502, (Minn. 1981).

A void judgment is one rendered in absence of jurisdiction over subject matter or parties, Lange v. Johnson, 204 N.W.2d 205 (Minn. 1973).

A void judgment is one which has merely semblance, without some essential element, as when court purporting to render it has no jurisdiction, Mills v. Richardson, 81 S.E.2d 409 (N.C. 1954).

A void judgment is one which has a mere semblance, but is lacking in some of the essential elements which would authorize the court to proceed to judgment, Henderson v. Henderson, 59 S.E.2d 227, (N.C. 1950).

Void judgment is one entered by court without jurisdiction to enter such judgment, State v. Blankenship, 675 N.E.2d 1303, (Ohio App. 9 Dist. 1996).

Void judgment, such as may be vacated at any time is one whose invalidity appears on face of judgment roll, Graff v. Kelly, 814 P.2d 489 (Okl. 1991).
A void judgment is one that is void on face of judgment roll, Capital Federal Savings Bank v. Bewley, 795 P.2d 1051 (Okl. 1990).

Where condition of bail bond was that defendant would appear at present term of court, judgment forfeiting bond for defendant's bail to appear at subsequent term was a void judgment within rule that laches does not run against a void judgment, Com. v. Miller, 150 A.2d 585 (Pa.Super. 1959).

A void judgment is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment, State v. Richie, 20 S.W.3d 624 (Tenn. 2000).

Void judgment is one which shows upon face of record want of jurisdiction in court assuming to render judgment, and want of jurisdiction may be either of persons, subject matter generally, particular question to be decided or relief assumed to be given, State ex re. Dawson v. Bomar, 354 S.W.2d 763, certiorari denied, (Tenn. 1962).

A void judgment is one which shows upon face of record a want of jurisdiction in court assuming to render judgment, Underwood v. Brown, 244 S.W.2d 168 (Tenn. 1951).

Void judgment is one which has no legal force or effect whatever, it is an absolute nullity, its invalidity may be asserted by any person whose rights are affected at any time and at any place and it need not be attacked directly but may be attacked collaterally whenever and wherever it is interposed, City of Lufkin v. McVicker, 510 S.X.2d 141 (Twx.Civ.App.-Beaumone 1973).

A void judgment, insofar as it purports to be pronouncement of court, is an absolute nullity, Thompson v. Thompson, 238 S.W.2d 218 (Tex.Civ.App.-Waco 1951).

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

A void judgment is a judgment, decree, or order entered by a court which lacks jurisdiction of the parties or of the subject matter, or which lacks the inherent power to make or enter the particular order involved, State ex re. Turner v. Briggs, 971 P.2d 581 (Wash.App.Div. 1999).

A void judgment or order is one that is entered by a court lacking jurisdiction over the parties or the subject matter, or lacking the inherent power to enter the particular order or judgment, or where the order was

Void judgments are those rendered by court which lacked jurisdiction, either of subject matter or parties, Cockerham v. Zikratch, 619 P.2d 739 (Ariz. 1980).

Void judgments generally fall into two classifications, that is, judgments where there is want of jurisdiction of person or subject matter, and judgments procured through fraud, and such judgments may be attacked directly or collaterally, Irving v. Rodriquez, 169 N.E.2d 145, (Ill. app. 2 Dis. 1960).

Invalidity needs to appear on face of judgment alone that judgment or order may be said to be intrinsically void or void on its face, if lack of jurisdiction appears from the record, Cockett Oil Co. v. Effie, 374 S.W.2d 154 (Mo.App. 1964).

Decision is void on the face of the judgment roll when form four corners of that roll, it may be determined that at least one of three elements of jurisdiction was absent: (1) jurisdiction over parties, (2) jurisdiction over subject matter, or (3) jurisdictional power to pronounce particular judgment that was rendered, B & C Investments, Inc. v. F & M Nat. Bank & Trust, 903 P.2d 339 (Okla.App.Div 3, 1995).

Void order may be attacked, either directly or collaterally, at any time, In Re Estate of Steinfield, 630 N.E.2d 801, certiorari denied, See also Steinfield v. Hoddick, 513 U.S. 809 (Ill. 1994).

Void order which is one entered by court which lacks jurisdiction over parties or subject matter, or lacks inherent power to enter judgment, or order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that party is properly before court, People ex. re. Brzica v. Village of Lake Barrington, 644 N.E.2d 66 (Ill.App.2 Dist. 1994).

While voidable orders are readily appealable and must be attacked directly, void order may be circumvented by collateral attack or remedied by mandamus, Sachez v. Hester, 911 S.W.2d 173, (Tex.App. -Corpus Christi 1995).

When rule providing for relief from void judgments is applicable, relief is not discretionary matter, but is mandatory, Orner. V. Shalala, 30 F.3d 1307 (Colo. 1994).

Judgments entered where court lacked either subject matter or personal jurisdiction, or that were otherwise entered in violation of due process of law, must be set aside, Jaffe and Asher v. Van Brunt, S.D.N.Y.1994, 158 F.R.D. 278.

A "void" judgment, as we all know, grounds no rights, forms no defense to actions taken thereunder, and is vulnerable to any manner of collateral attack (thus here, by). No statute of limitations or repose runs on its holdings, the matters thought to be settled thereby are not res judicata, and years later, when the memories may have grown dim and rights long been regarded as vested, any disgruntled litigant may reopen old wound and once more probe its depths. And it is then as though trial and adjudication had never been. Fritts v. Krugh, Supreme Court of Michigan, 92 N.W.2d 604, 354 Mich. 97 (10/13/58).


Prerequisites for Subject Matter Jurisdiction

The really bid deal, the real issue in void judgments is SUBJECT MATTER JURISDICTION!!! Remember, subject matter can never be presumed, never be waived, and cannot be construed even by mutual consent of the parties. Subject matter jurisdiction is two part: the statutory or common law authority for the court to hear the case and the appearance and testimony of a competent fact witness, in other words, sufficiency of pleadings. Subject matter jurisdictional failings:

1. No Petition in the record of the case, Brown v. VanKeuren, 340 Ill. 118, 122 (1930)
2. Defective Petition filed, Brown v. VanKeuren, 340 Ill. 118, 122 (1930)
3. Fraud committed in the procurement of jurisdiction, Fredman Brothers

4. Fraud upon the court, In re Village of Willowbrook, 37 Ill. App.3d 393 (1962)

5. A judge does not follow statutory procedure, Armstrong v. Obucino, 300 Ill. 140, 143 (1921).


7. Violation of due process, Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019 (1938); Pure Oil Co. v. City of Northlake, 10 Ill.2d 241, 245, 140 N.E.2d 289 (1956); Hallberg v. Goldblatt Bros., 363 Ill.25 (1936);


12. Where any litigant was represented before a court by a person/law firm that is prohibited by law to practice in that jurisdiction.

13. When the judge is involved in a scheme of bribery (the Alemann cases, Bracey v. Warden, U.S. Supreme Court No. 96-6133; June 9, 1997)

14. Where a summons was not properly issued.

15. Where service of process was not made pursuant to statute and Supreme Court Rules, Janove v. Bacon, 6 Ill. 2d 245, 249, 218 N.E.2d 706, 708 (1955).

16. When the Rules of Circuit Court are not complied with.
What do I do about this debt judgement?

Asked by BinkydollCat On Dec 09, 2006

Share this question:

Ok...I'll try to sum this as best I can. A credit card company that I owed an original debt was given to a law firm to collect the debt. The firm claimed it was 3000 or so, and I received letters and then a judgement and so I paid a partial amount on the debt 6 months ago of 980. I didn't receive any other letters from them except 6 months later when they proceeded with the judgement in the amount of now 3,755.52!

The amount should have been 2019 but now they added all these fees/interest, but according to the FDCPA, the firm violates 15 U.S.C.1692e by indicating an additional amount of interest, undetermined fees and costs. It is a violation to collect or sue for "collection costs," "attorney's fees," interest not pre-agreed to in excess of that allowed by statute, "fines," or any other fee in excess of the actual amount due.

In a 6 month period, they added and additional amount of $1736.52! For what? 😞

I originally had no problem paying off the original debt but now I just feel like I am being harassed and I refuse to pay the additional fees.

So now, I researched my credit report and found out that the original debt to the credit card co was only 2124. So, I wrote them a letter along with the Federal Law which I believe they have violated, and I received a nasty letter back along with the threat of a court officer to seize property to satisfy the judgement against me!

I am currently 9 months pregnant and due in 3 days, not married, not employed. I do not own a home or a car...I lost my business 2 years ago because my dad attempted suicide, was admitted into a mental hospital and now needs constant supervision.

So, I don't know what to do at this point; is there a way to fight the judgement? Can I file something to the court? What do I have to file? Do I ask an attorney? Any suggestions would be greatly appreciated.
WHY COURT CAN NOT ASSUME THAT A DEBT BUYER OWNS THE DEBT WITHOUT PROOF

In 2004, the Federal Trade Commission shut down a debt buyer called CAMCO headquartered in Illinois. The following is from a press release issued by the FTC in connection with that case.

... In papers filed with the court, the agency charged that as much as 80 percent of the money CAMCO collects comes from consumers who never owed the original debt in the first place. Many consumers pay the money to get CAMCO to stop threatening and harassing them, their families, their friends, and their co-workers.

According to the FTC, CAMCO buys old debt lists that frequently contain no documentation about the original debt and in many cases no Social Security Number for the original debtor. CAMCO makes efforts to find people with the same name in the same geographic area and tries to collect the debt from them – whether or not they are the actual debtor. In papers filed with the court, the FTC alleges that CAMCO agents told consumers – even consumers who never owed the money – that they were legally obligated to pay. They told consumers...
that if they did not pay, CAMCO could have them arrested and jailed, seize their property, garnish their wages, and ruin their credit. All of those threats were false, according to the FTC. . . .
(http://www.ftc.gov/opa/2004/12/camco.htm)

THE POSSIBILITY THAT A DEBT BUYER IS SUING ON A DEBT IT DOES NOT OWN IS VERY REAL.

An article that appeared in the trade press shortly before the 2007 extension of the Illinois Collection Agency Act to debt buyers stated:

More collection agencies are turning to the debt resale market as a place to pick up accounts to collect on. Too small to buy portfolios directly from major credit issuers, they look to the secondary market where portfolios are resold in smaller chunks that they can handle.

But what they sometimes find in the secondary market are horror stories:

The same portfolio is sold to multiple buyers; the seller doesn't actually own the portfolio put up for sale; half the accounts are out of statute; accounts are rife with erroneous information; access to documentation is limited or nonexistent. . . . Corinna C. Petry, Do Your Homework; Dangers often lay hidden in secondary market debt portfolio offerings. Here are lessons from the market pros that novices can use to avoid nasty surprises, Collections & Credit Risk, March 2007, pg. 24 Vol. 12 No. 3.

Debt buyer American Acceptance filed a lawsuit alleging that a broker of charged-off debts sold it debts to which it did not have title. American Acceptance Co. v. Goldberg, 2:08cv9 (N.D.Ind.). Another debt buyer, Hudson & Keyse, filed suit alleging that the same debt broker obtained information about consumer debts owned by Hudson & Keyse and used the information to try to collect the debts for its own account, even though it didn’t own them. Hudson & Keyse, LLC v. Goldberg & Associates, LLC, 07-81047-civ (S.D.Fla., filed Nov. 5, 2007). A similar suit, alleging that the broker resold accounts it did not own, was filed by Old National Bank, Old National Bank v. Goldberg & Associates, 9:08-cv-80078-DMM (S.D.Fla., Jan. 24, 2008). The same debt broker is accused in another complaint of selling 6,521 accounts totalling about $40 million face value which it did not own. RMB Holdings, LLC v. Goldberg & Associates, LLC,
There are reported cases in which debtors have been subjected to litigation because they “settled” with A and then B claimed to own the debt. Smith v. Mallick, 514 F.3d 48 (D.C.Cir. 2008) (commercial debt purchased and resold by debt buyer, debt buyer [possibly fraudulently] settles debt it no longer owns, settlement held binding because notice of assignment not given, but obligor subjected to litigation as result). See also, Miller v. Wolpoff & Abramson, LLP, 1:06-CV-207-TS, 2008 U.S. Dist. LEXIS 12283 (N.D.Ind., Feb. 19, 2008), where a debtor complained he had been sued twice on the same debt; Dornhecker v. Ameritech Corp., 99 F. Supp. 2d 918, 923 (N.D.Ill. 2000), where the debtor claimed he settled with one agency and was then dunned by a second for the same debt, and Northwest Diversified, Inc. v. Desai, 353 Ill.App.3d 378, 818 N.E.2d 753 (1st Dist. 2004), where a commercial debtor paid the creditor only to be subjected to a levy by a purported debt buyer.

In Wood v. M&J Recovery LLC,. CV 05-5564, 2007 U.S. Dist. LEXIS 24157 (E.D.N.Y., April 2, 2007), a debtor complained of multiple collection efforts by various debt buyers and collectors on the same debt, and the defendants asserted claims against one another disputing the ownership of the portfolio involved.

Shekinah alleged that it sold a portfolio to NLRS, that NLRS was unable to pay, that the sale agreement was modified so that NLRS would only obtain 1/5 of the portfolio, and that the 1/5 did not include the plaintiff’s debt. Portfolio claimed that it and not Shekinah is the rightful owner of the portfolio.


Recently, courts have dismissed numerous foreclosure and collection lawsuits to have been filed in the names of entities that do not own the purported debts. In re Foreclosure Cases, 1:07CV2282 and 14 others, 2007 U.S. Dist. LEXIS 84011,
2007 WL 3232430 (N.D. Ohio Oct. 31, 2007). In the Ohio cases, foreclosure complaints alleged that the named plaintiffs were the holders and owners of the notes and mortgages, but they were not the original payees and there was nothing showing that the plaintiffs owned the notes and mortgages at the time suit was filed. Dismissing the cases, the court commented (*8-9):

Clearly, this court must agree that no consumer can rely on a debt buyer’s assertion that it owns the debts, without a proper chain of title.

**RIGHT TO OBTAIN VERIFICATION OF DEBT UNDER FAIR DEBT COLLECTION PRACTICES ACT/ PROOF OF TITLE UNDER UNIFORM COMMERCIAL CODE**

A. The Fair Debt Collection Practices Act entitles the consumer to verification of the debt if requested within 30 days of initial communication from debt collector. 15 U.S.C. §1692g.

B. Cases are unclear as to what is sufficient under the FDCPA. Clark v. Capital Credit & Collection Servs., 460 F.3d 1162 (9th Cir. 2006); Chaudhry v. Gallerizzo, 174 F.3d 394 (4th Cir. 1999); Stonehart v. Rosenthal, 01 Civ. 651, 2001 WL 910771 (S.D.N.Y., Aug. 13, 2001); Erickson v. Johnson, No. 05-427 (MJD/SRN), 2006 U.S. Dist. LEXIS 6979 (D.Minn. Feb. 22, 2006); Recker v. Central Collection Bureau, 1:04-cv-2037-WTL-DFH, 2005 U.S. Dist. LEXIS 24780 (S.D.Ind., October 17, 2005); Monsewicz v. Unterberg & Assocs., P.C., 1:03-CV-01062-JDT-TAB, 2005 U.S. Dist. LEXIS 5435, at *15 (S.D. Ind. Jan. 25, 2005); Semper v. JBC Legal Group, No. C04-2240L, 2005 U.S. Dist. LEXIS 33591 (W.D.Wash. Sept. 6, 2005); Mahon v. Credit Bureau of Placer County Inc., 171 F.3d 1197, 1203 (9th Cir. 1999) (debt collector properly verified debt by contacting the original creditor, verifying the nature and balance of the outstanding debt, reviewing the efforts the original creditor made to obtain payment, and establishing that the balance remained unpaid); Sambor v. Omnia Credit Servs., Inc., 183 F. Supp. 2d 1234, 1233 (D. Hawaii 2002) (stating by way of example that a debt collector seeking to collect amounts owed to a credit card company would have to cease attempts to collect the debt if a fire destroyed the credit card company’s records, thereby precluding verification of the debt); Spears v. Brennan, 745 N.E.2d 862, 878-79 (Ind. App. 2001) (a copy of the original debt instrument does not verify that there is an existing unpaid...
balance and does not satisfy the verification requirement of § 1692g(b)).

Pro-Se America

P.O. Box 49
Westpoint KY 40177

LETTER OF AGREEMENT AND MEMBERSHIP FOR RESEARCH INFORMATION ON CONSUMER DEBT

Pro-Se America is a self-help group dedicated to stopping the immoral business of debt buying. This is a Letter of Agreement is between Pro-Se America and you (the “customer”),

________________________________________________
(Print in your full name), and Pro-Se America

Pro-Se America will provide you with limited sources of information and self-help methods for you to deal with the proper documentation and correction of errors on your personal consumer credit card debt. This is described below.

I. IMPORTANT NOTICES GOVERNING THIS AGREEMENT

1. By signing this Letter of Agreement you are confirming that you have read and fully understand the scope of the information that will be provided you the before you sign this document.

2. You understand that you will be provided a limited overview of the credit card debt process and your rights as a consumer, a limited list of publication on consumer credit card debt matters, and a partial list of the documentation that your are legally entitled to if you were to write the financial institution(s) that have provided you with credit card debt. After we have received your

check for payment of our fee and a signed copy of this agreement in the mail we will transmit this information to you by e-mail and then have a follow up phone conversation to make sure that everything arrived properly
3. The staff members at Pro-Se America are not attorneys. We cannot provide the legal advice and legal services that an attorney performs. We cannot engage in the practice of law.

If you need legal advice you should engage an attorney. If you have been sued by a credit card issuer, a debt provider or a collection firm you should consult an attorney.

4. We are not engaged in the business of negotiating the payment of debt with your lender. We do not represent you with lenders or credit reporting agencies. Our only payment comes from the one-time fee that you are paying this firm for the debt research information itemized in this letter. If you need such representation you must consult an attorney or qualified provider of financial services.

5. We cannot and will not review copies of the original credit card debt agreements, correspondence, statements or any other documents in your file from your credit card lenders. (Do not mail or e-mail such information to us.) We are not and will not provide you with any type of financial, tax or accounting advice. If you need financial, tax or accounting advice you must consult a qualified financial or tax expert.

6. Our service is limited to providing you with the identification of published factual legal information. This included information on consumer credit card debt matters written by attorneys and journalists or authors who have published on the subject of consumer debt and consumer rights. Also included in this bibliography will be actual copies of relevant legislation and court cases covering consumer debt matters. Some of these will be sent to you as e-mail word documents for easy copy and pasting.

7. Furthermore, by signing this Letter of Agreement you are confirming that you have a practical working facility with Microsoft Word in either a PC or Mac environment. And that you also have a functional e-mail account where we can reach you. And that you have the personal expertise to draft a basic business letter. Furthermore you are agreeing that the personal computer that you will be using has one of the following two operating system requirements: PC-based users are required to have: Windows® 2000, XP Home, XP Pro, 2003 Server, Vista. Macintosh®-based users are required to have: the Mac OS® X 10.4 (Tiger®) or newer operating system.
8. Finally, the “customer” (identified below) who has personally signed this document further agrees that should any disputes that arise under this contract or Letter of Agreement will have a venue in Jefferson County, Kentucky. Moreover the “customer” noted below further understands and agrees that the non-prevailing party will pay all the court costs, filing fees, and the prevailing party's reasonable attorneys' fees and related expenses.

II. FEES AND EXPENSES

Again, by signing this Letter of Agreement, you agree to pay Pro-Se America the following fees, costs and expenses: a flat fee in the total amount of $50.00 --- paid for with your personal check --- or money order. Please leave payee on check or money blank and we will fill it out. This payment will cover all services, costs and expenses, excluding additional materials offered for sale on this site.

This membership includes our legal pleadings CD valued at $125.00 In addition, one of the Pro-Se America staff members will reach you with a separate personal phone call to make sure that you received your materials, and to determine if you have questions about what our services offer

III. CONFIDENTIALITY

Pro-Se America and its staff members will hold your identity and any personal information you might incidentally disclose about yourself in strict confidence. Conversely by signing this Letter of Agreement, you are agreeing not to disclose to others or to publicize to others the information provided to you by Pro-Se America or its staff members.

IV. CANCELLATION

You may cancel this Letter of Agreement for any reason within 24 hours after you have signed it. If you cancel the contract, Pro-Se America will return your check if it has not been processed for deposit. As a practical matter and standard operating procedure we will hold all checks received for 2 (two) days before they are processed for deposit.

IV. DESCRIPTION OF THE PARTIES

Party “A” Pro-Se America,
Challenges for Collecting Purchased Debt
James M. McNeile
Cohen McNeile Pappas & Shuttleworth P.C., Leawood, Kansas

All of us know it is more difficult to collect purchased debt than originated debt by using the traditional legal collection approach. The difficulties from a lawyer's perspective lie mainly in problems of proof. A creditor that originates debt has access to the documentation that courts require attorneys to introduce as evidence in order to obtain a judgment. Many debt purchasers either do not have access to the source documents or can only obtain those documents at great cost. How then can debt purchasers utilize the court system to collect debts that are legally due and valid? Ken Gelhaus reports that in New York the problems of collecting on purchased debt have increased greatly in the last year. At one time in New York, court clerks entered a default judgment on claims for "sums certain" without running the papers past a judge for review and signature. In recent months, however, clerks are refusing to do so and requiring that a judge's order granting default judgment be obtained.
In one of his recent cases, Ken reports that he applied for a default judgment using the affidavit of an officer of the purchasing plaintiff. The affidavit, although able to reference the date of the purchase of the debt and the balance purchased, was deficient in that it did not include any actual business records of the originating creditor. The court found that the affidavit of the debt purchaser was insufficient and conclusory. The court suggested the debt purchaser furnish a copy of the assignment or contract assigning the claims, along with a copy of any statement or record clearly demonstrating the calculation and the amount of the claim. If monthly statements were furnished to the defendant, copies of the most recently sent statements should be annexed. Reliable and factual information concerning the claim is required.

Even if we as attorneys include such items, they are business records of the originating creditor, not the purchasing plaintiff. At least in New York, these business records would have no probative value, because no one at the purchasing plaintiff has "personal knowledge" of the creation, maintenance, issuance, and tracking of the statements. In the eyes of the court, such affidavits are hearsay and therefore not admissible. A purchasing plaintiff is unable to swear to the authenticity of the originating or source documents of a credit transaction because they do not have personal knowledge of the events which transpired at that period of time in the life of the credit agreement. The original cardholder agreement, any correspondence, and monthly statements issued by the original credit grantor are not admissible as the purchasing plaintiff's business records, as the purchasing plaintiff has no personal knowledge of how those records were created or maintained.

How then can the purchasing plaintiff's counsel obtain a judgment for their client in the face of a court's refusal to grant judgment on a legitimate debt purchased by a third-party? The obvious answer is to obtain the affidavit of the originating creditor and annex the documents of the originating creditor to their affidavit. The originating creditor would have actual and personal knowledge of the events which led to the creation of the debt, as well as the events which lead to the sale of the debt. A second alternative would be to attempt to obtain a novation of the original credit agreement, which might be accomplished by either obtaining a signed statement from the debtor agreeing to pay the balance owed. Alternatively, if the debtor refuses to sign such a statement, the purchaser could send monthly statements which, if not objected to by the debtor, might be introduced by way of the purchasing plaintiff's affidavit, indicating that no objection had been made to the statements of account. Therefore,
the debtors are estopped from denying the existence of the balance.

Absent a willingness by debt sellers to sign a business records affidavit as to the origination and sale of the account, or a novation by the purchasing plaintiff of the original debt, lawyers will be increasingly hard pressed to obtain judgments for legitimate debts purchased by debt buyers. If purchasing plaintiffs wish to continue to be able to use the court system to enforce their purchased debt, it is going to be increasingly necessary for documentation to be readily available for their counsel and the courts.

Notice: The NARCA Newsletter is a publication of the Association of Retail Collection Attorneys with headquarters at 1620 I Street, NW Ste 615, in Washington, D.C. 20006 -- Telephone 800-633-6069 or 202-861-0706. An appearance of an advertiser in this publication does not constitute an endorsement.

Open Letter To Debt Foreclosing Attorneys:

Now is probably your best/last chance to get out of the business before the crushing blows come. You can bet your first born that it is coming.

More and more ordinary people are learning the law, not what is taught in law school, but what the law really is and how it really works.

The recent Deutsch case in Ohio gave them the key to what is really going on in the debt foreclosing business. The case revealed fraud that is being perpetrated upon the Court by the debt foreclosing (debt buying) industry, and the fraud being foisted upon the debtor/consumer by both the legal and credit industries. They are learning not only how to survive the foreclosure litigation, be it credit card or mortgage, but also how to go about filing criminal complaints and petitioning to convene a grand jury investigation, even going before Grand Juries investigating public corruption.

What's more, they are learning to subpoena judges as hostile witnesses to the fraud that the judges know is going on, and that with knowledge they are complicit. If lawyers and judges actually knew the law, very few legal actions would ever go forward and most lawyers would be out of a job, as they should be. It is my opinion that lawyers and judges seem to know so little about law because their legal education was grotesquely inefficient, dwelling on the intellectual morass of political correctness, sophistry (false logic), fine-tuning the art of deception, and learning the art of intentional obfuscation. In plain language, they are being taught how to lie, cheat, and steal.
The recent case in Durham, North Carolina, demonstrated the corruption that is rampant in our legal system. There are many who want that prosecutor jailed for his attempt to try and convict Defendants that he knew to be innocent. The prosecutor withheld evidence that showed their innocence, and all was being done for the prosecutor's personal gain.

This behavior has become a "matter of course" within our judicial system. It goes even further. In a tax case in California, OJ Attorneys confessed on the record that Department of Justice Attorneys, as well as Judges, receive bribes called incentives for successful convictions.

In another tax case, the DOJ Attorneys lied to the Grand Jury to get an indictment and lied to the trial court jury to get a conviction. On numerous occasions, Courts have been challenged for lack of Subject Matter Jurisdiction and the Judges response would sound like this: "The Legislature/Congress has granted this Court its Subject Matter jurisdiction." Well, that is true as far as it goes. The Legislature/Congress did grant the Court Subject Matter Jurisdiction to hear a case of a particular type. Subject Matter Jurisdiction to hear a particular case comes from sufficiency of the pleadings.

This begs the question of what kind of case is before the Court?

If the pleadings are insufficient, then the Court does not know what KIND of case is before it, and the Court's power to act has not been invoked, that is, the Court lacks Subject Matter Jurisdiction. Proceeding from this point is a fraud, and the Judge is a party to it. Additionally, if the Court violates due process, it loses its jurisdiction and cannot get it back. It is over. Again, proceeding from this point is a fraud, and the Judge is a party to it, not counting his felonious official misconduct.

A debt case, be it credit card or mortgage, before a Court with both testimony of a competent fact witness and authenticated evidence is as rare as "hens" teeth.

Missing just those two items, the court cannot identify what kind of case is before it and its power to act has not been invoked. It lacks Subject Matter Jurisdiction.

Once ordinary people come to realize this, all Hell will descend upon our judicial system, even to the point of what happened in Oklahoma where a Judge was arrested during a trial. Seems he had been using a sex toy during that trial and numerous other trials. Yes, criminal law does apply to a Judge –

**The Four Horsemen of the Apocalypse are riding your way!**

Leave the industry before you loose your fortune, your means for livelihood, and possibly your freedom.
Act accordingly.

Perry & Mason

Your hosts on Pro-Se America.

Founders of the

Jurisdiction of Louisville.

Pro-Se America Radio

Your Experts When Dealing With Debt Collectors...Foreclosures...& Civil Procedures!

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Socrates on being asked,

"What is the most troublesome to good men?"

Answered,

"The prosperity of the wicked"
"IF ALL OF THE MONEY COLLECTED ILLEGALLY FROM GARNISHMENTS WERE RETURNED TO THEIR OWNERS IT WOULD REPRESENT THE LARGEST SHIFT OF FINANCIAL WEALTH THE WORLD HAS EVER WITNESSED".

RICHARD CORNFORTH

IT IS OUR GOAL TO EDUCATE AND ENCOURAGE EVERY AMERICAN TO BECOME INVOLVED WITH THE AMERICAN JUSTICE SYSTEM. IT IS OUR DEDICATION THAT WILL ASSURE THE CONTINUING RINGING OF FREEDOMS BELL.

TODAY THERE ARE HUNDREDS OF THOUSANDS OF PEOPLE BEING TAKEN ADVANTAGE BY GREEDY 3RD PARTY DEBT COLLECTORS THAT ARE MAKING THE FALSE CLAIM OF WORKING IN BEHALF OF THE ORIGINAL CREDITOR.

THESE DEBT COLLECTORS ARE BUYING WORTHLESS PAPER AT 4 TO 5 CENTS ON THE DOLLAR AND PULLING THE WOOL OVER THE UNSUSPECTING PUBLIC'S EYES.

THEY HAVE NO LEGAL RIGHT TO COLLECT THIS DEBT. UNFORTUNATELY WE MUST LEARN TO CHALLENGE THEM IN COURT TO STOP THEM...AND STOP THEM WE WILL!

WE ARE DETERMINED TO BRING THESE CRIMINALS TO JUSTICE!

JOIN US!

Void Judgments
Black's Law Dictionary, 6th Edition, defines a void judgment as follows:

A void judgment comes into being when there is not sufficiency of pleading to fully establish the court having subject matter jurisdiction. In other words, neither party has firmly set that the court has jurisdiction in the matter.

What this means to you is that practically all "debt judgments" handed down by the courts are in fact void judgments. They can be vacated (made to disappear).

The results you can produce are unbelievable, and you just didn't know you had the power to shake up this predatory industry, did you?

The debt collection industry collects billions of dollars from those who are unable to protect themselves and do it using void judgments. What a racket that is!

It's up to you, keep paying, or make them pay. Your choice!!

Now it's YOUR turn

SUE THEM!

The Corruption Stops Here!

Join us and together we will put meaning of Justice back into the word of JUSTICE.

http://www.afn.org/~afn54735/
Disqualifying Judges and VOID Judgements

- 05-16-2011, 06:23 PM

Lawful Aim

Disqualifying Judges and VOID Judgements

http://fulldisclosure.net/Blogs/98.php

Background:
Los Angeles, CA Former U S Prosecutor Dr. Richard I Fine explains how citizens can disqualify a State judge who is "on the take". All 430 California Superior Court Judges in L A County can be disqualified by citizens who have been involved in litigation against the County of Los Angeles in the last two decades. If you lost your case and did not know your judge was getting money from the County, Richard Fine says you can "Null & Void" the Judge's Order and get a new trial.

GET YOUR MONEY BACK?
If you paid money to the County, you now have a chance to recover that money, according to Dr. Fine's experience, he has already disqualified five judges who have been "On the Take" in his cases involving the County of L.A. That is why he was locked up in L.A. County jail for 18 months without being charged or convicted of a crime. Now he can show you the way to get JUSTICE. Featured here are Dr. Fine's Motions to "Null & Void" that were used by him to disqualify the five Judges so far in his case.

http://fulldisclosure.net/Blogs/96.php

- 05-16-2011, 06:35 PM
Lawful Aim

More on VOID judgments;
http://void-judgments.com/twenty_reasons.html

- 07-29-2011, 03:14 PM
Robin47

Quote:

Originally Posted by Lawful Aim

More on VOID judgments;
http://void-judgments.com/twenty_reasons.html

Thanks Lawful Aim again!

This is good Ammo when we need it, to protect our rights.

Robin47 :)
Richard's situation is just the very extreme tip of the ice berg. The more that know the truth the more that can pursue lawful remedy and accomplish even more.

- 07-29-2011, 11:39 PM

coolusername2007

I wonder if this could help Theseus. If he was tried in the LA County court system and if his judge was on the take, it would seem he might be able to get a new trial. Probably not though if he was in some municipal court. Without going over his court docs, I wouldn't know.

- 08-31-2011, 07:17 PM

Lawful Aim

He surely has a case for a Void Judgment and with nothing to lose.

http://www.caught.net/prose/gembala.htm

Eugene Alpern
P.O. Box 672
Morton Grove, IL 60053-0672

September 11, 1997

State of Illinois
Judicial Inquiry Board
100 W. Randolph St. - 14-500
Chicago, IL 60601

REQUEST FOR INVESTIGATION
OF JUDGE FRANCIS A. GEMBALA
FOR VIOLATION OF THE CODE OF JUDICIAL CONDUCT
I have information of possible willful misconduct in office, persistent failure to perform his duties, and other conduct that is prejudicial to the administration of justice and that brings both his judicial office and the judiciary into disrepute on the part of Francis A. Gembala of the Circuit Court of Cook County, Illinois. A judge should strive to maintain confidence in our judicial system (Preamble to Code of Judicial Conduct), but Judge Gembala's actions destroy confidence in the judicial system. Unless he is severely disciplined or removed from office, he will continue to violate the Code of Judicial Conduct.

Judge Gembala knew, or should have known, that he had conscientiously, arbitrarily, capriciously, deliberately, intentionally, and knowingly engaged in conduct in violation of the Supreme Law of the Land, in violation of his duty under the law, in "fraud upon the court" and to aid and abet others in criminal activity, thus making himself a principal in the criminal activity. BACKGROUND

A complaint for Declaratory Judgment was filed as case no. 96-CH-5651, EUGENE W. ALPERN v. PHYLLIS ALPERN, ALLEN S. GABE, ROBERT K. BLAIN, and REGINA SCANNICCHIO, and the full and complete record of that case is incorporated as a part of this Complaint. The purpose of the case was to declare a judgment in case no. 91-D-5122 void for reasons stated in the complaint. The 96-CH-5651 case has been concluded, with the issuance of a void judgment due to, among various reasons, fraud upon the court by the defendant's attorneys and by Judge Gembala (see infra). Since fraud upon the court voids the entire proceeding, In re Village of Willowbrook, 37 Ill.App.2d 393 (1962) ("It is axiomatic that fraud vitiates everything."); People ex rel. Chicago Bar Ass'n v. Gilmore, 345 Ill. 28, 177 N.E. 710 (1931), this complaint has nothing to do with the voidness of the purported decision, but on the violations of judicial conduct of Judge Gembala.

In case no. 96-CH-5651, Judge Gembala judgment stated that:

"Thus this court lacks jurisdiction to grant plaintiff the relief he seeks, which amounts to a vacatur of the Judgment of Dissolution. Moreover, this court is aware of no authority which would permit it to vacate an order of the Appellate Court." CODE OF JUDICIAL CONDUCT

The Illinois Supreme Court issued the Illinois Code of Judicial Conduct as Supreme Court Rules ("SCR"). The Illinois Code of Judicial Conduct is incorporated herein as a part of this Complaint. Supreme Court Rules are law, and must be followed by litigants, attorneys, and all Circuit and Appellate Court judges. Compliance with SCR is not discretionary, but is mandatory. Any noncompliance is unlawful, and judges have no lawful authority to act unlawfully.
The Illinois Code of Judicial Conduct Rule 62(A) states: A judge should respect and comply with the law and should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

The Illinois Code of Judicial Conduct Rule 63(A) states:

(A) Adjudicative Responsibilities

(1) A judge should be faithful to the law and maintain professional competence in it. INHERENT POWER OF THE COURT

Judge Gembala knew, or should have known, that every court of lawful jurisdiction has the inherent power to determine subject-matter jurisdiction. Inherent power of a court is not dependent on whether a court has jurisdiction, otherwise it could never have the lawful authority to determine if it had jurisdiction in any matter before it. This inherent power to determine jurisdiction applies not only to determine its own jurisdiction, but the jurisdiction of any other court. People v. Childs, 278 Ill.App.3d 65, 663 N.E.2d 161 (4th Dist. 1996) (“The duty to vacate a void judgment is based on the inherent power of a court to expunge from its records void acts of which it has knowledge.”); Evans v. Corporate Services, 207 Ill.App.3d 297, 565 N.E.2d 724 (2nd Dist. 1990) (“A court has inherent authority to expunge void acts from its records.”).

Judge Gembala knew, or should have known, that under the Supreme Law of the Land:

"Courts are the mere instruments of the law, and can will nothing. When they are said to exercise a discretion, it is a mere legal discretion, a discretion to be exercised in discerning the course prescribed by law, and, when that is discerned, it is the duty of the court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the judge; always for the purpose of giving effect to the will of the legislature; or, in other words, to the will of the law." [Emphasis in original]. Littleton v. Berbling, 468 F.2d 389, 412 (7th Cir. 1972), citing Osborn v. Bank of the United States , 9 Wheat (22 U.S. ) 738, 866, 6 L.Ed 204 (1824); U.S. v. Simpson, 927 F.2d 1088, 1090 (9th Cir. 1991).

Judge Gembala knew, or should have known, that the void judgment brought before him, remains void even if he did not vacate it. Judge Gembala knew, or should have known, that the void judgment was not affirmed nor validated by his failure to properly exercise his judicial duty.
Judge Gembala knew, or should have known, that he had the duty, and had no discretion, to vacate void orders and judgments. Judge Gembala knew, or should have known, that he had conscientiously, arbitrarily, capriciously, deliberately, intentionally, and knowingly engaged in conduct in violation of his duty as a judge, and engaged in violation of the Supreme Law of the Land. TREASON

Judge Gembala knew, or should have known that, by his previous allegation that he had no jurisdiction, he committed treason against the Constitution. "We [Judges] have no more right to decline the exercise of jurisdiction which is given, then to usurp that which is not given. The one or the other would be treason to the Constitution." [clarification added] U.S. v. Will, 449 U.S. 200, 216, 101 S.Ct. 471, 66 L.Ed.2d 392, 406 (1980); Cohens v. Virginia, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed 257 (1821).

Judge Gembala should not have engaged in treason to the Constitution, a Constitution to which he has taken a personal oath to support. VIOLATION OF SUPREME LAW OF THE LAND

All judges have taken an oath to, and their lawful authority depends on their complete and full compliance with, the Constitution of the United States of America, and the Supreme Law of the Land.

The Supreme of the Land can be found in the decisions of the U.S. Supreme Court. In Old Wayne Mut. L. Assoc. v. McDonough, 204 U.S. 8, 27 S.Ct. 236 (1907), the Supreme Court ruled that:

"Chief Justice Marshall had long before observed in Ross v. Himely, 4 Cranch 241, 269, 2 L.ed. 608, 617, that, upon principle, the operation of every judgment must depend on the power of the court to render that judgment. In Williamson v. Berry, 8 How. 495, 540, 12 L.ed. 1170, 1189, it was said to be well settled that the jurisdiction of ANY COURT exercising authority over a subject `may be inquired into in EVERY OTHER COURT when the proceedings in the former are relied upon and brought before the latter by a party claiming the benefit of such proceedings,' and the rule prevails whether `the decree or judgment has been given, in a court of admiralty, chancery, ecclesiastical court, or court of common law, or whether the point ruled has arisen under the laws of nations, the practice in chancery, or the municipal laws of states.'" [Emphasis added].

In Elliott v. Peirsol, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828), the court stated that "without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They
constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers. This distinction runs through all the cases on the subject; and it proves, that the jurisdiction of ANY COURT exercising authority over a subject, may be inquired into IN EVERY COURT, when the proceedings of the former are relied on and brought before the latter, by the party claiming the benefit of such proceedings." [Emphasis added].

Judge Gembala knew, or should have known, the law and the U.S. Supreme Court decisions that ANY COURT and EVERY COURT can vacate a void order. Judge Gembala conscientiously, arbitrarily, capriciously, deliberately, intentionally, and knowingly engaged in conduct in violation of the Supreme Law of the Land, and of Rule 62(A) and Rule 63(A). VIOLATION OF THE LAW OF ILLINOIS

Judge Gembala knew, or should have known, the Illinois Supreme Court decisions that ANY COURT can vacate a void order.

Contrary to Judge Gembala's alleged non-finding, and considering that the writer is a non-lawyer, he found many Illinois Supreme Court and Appellate Court decisions that grant all judges lawful authority to vacate the 91-D-5122 judgment before him. As only a few of the many Illinois citations, the following are presented:

In City of Chicago v. Fair Employment Practices Com., 65 Ill.2d 108, 357 N.E.2d 1154 (1976), the court stated that "A judgment, order or decree entered by a court which lacks jurisdiction of the parties or the subject matter, or which lacks the inherent power to make or enter the particular order involved, is void, and may be attacked at any time or in ANY COURT, either directly or collaterally." [Emphasis added].

In R.W. Sawant & Co. v. Allied Programs Corp., 111 Ill.2d 304, 309, 489 N.E.2d 1360 (1986), the court stated that "[a] judgment, order or decree entered by a court which lacks jurisdiction of the parties or the subject matter, or which lacks the inherent power to make or enter the particular order involved, is void, and may be attacked at any time or in ANY COURT, either directly or collaterally." [Emphasis added].

In Evans v. Corporate Services, 207 Ill.App.3d 297, 565 N.E.2d 724 (2nd Dist. 1990) the court stated that "a void judgment, order or decree may be attacked at any time or in ANY COURT, either directly or collaterally" [Emphasis added].

Judge Gembala knew, or should have known, that the phrases "ANY COURT", "IN ANY COURT", "IN EVERY COURT" and "EVERY OTHER COURT" found in Court decisions means any court in Cook County, any
court in the State of Illinois, or in any court, state or federal, in the United States, as a void order has no legal force or effect, and is not, and could not be, at any time a final judgment.

In People v. Streeper, 12 Ill.2d 204, 145 N.E.2d 625 (1957), the Court stated that "The jurisdiction of the court must be determined as of the commencement of the action. Pennoyer v. Neff, 95 U.S. 714, 24 L.Ed. 565".

Judge Gembala knew, or should have known, that he had to determine the question of subject-matter jurisdiction at the commencement of the 90-D-2724 action in 1970 and the 91-D-5122 action in 1971. Judge Gembala did not comply with the law, and did not determine whether jurisdiction of the Circuit Court of Cook County existed at either pertinent times.

Judge Gembala conscientiously, arbitrarily, capriciously, deliberately, intentionally, and knowingly engaged in conduct in violation of Rule 62(A) and Rule 63(A). FRAUD UPON THE COURT

"Fraud upon the court" occurs whenever any officer of the court commits fraud before a tribunal. A judge is not a court; he is under law an officer of the court, and he must not engage in any action to deceive the court. Trans Aero Inc. v. LaFuerqa Area Boliviana, 24 F.3d 457 (2nd Cir. 1994); Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985) (fraud upon the court exists "where the judge has not performed his judicial duties").

The Supreme Court, In re Eugene Lee Armentrout et al., 99 Ill.2d 242, 75 Ill.Dec. 703, 457 N.E.2d 1262 (1983), stated that:

"Fraud encompasses a broad range of human behavior, including "'** anything calculated to deceive,*** whether it be by direct falsehood or by innuendo, by speech or by silence, by word of mouth or by look or gesture.' " (Regenold v. Baby Fold, Inc. (1977), 68 Ill.2d 419, 435, 12 Ill.Dec. 151, 369 N.E.2d 858, citing People ex rel. Chicago Bar Association v. Gilmore (1931), 345 Ill. 28, 46, 177 N.E. 710; In re Alschuler (1944), 388 Ill. 492, 503-04; Black's Law Dictionary 594 (5th ed. 1979).) Too, this court has previously disciplined lawyers even though their fraudulent misconduct did not harm [99 Ill.2d 252] any particular individual. In re Lamberis (1982), 93 Ill.2d 222, 229, 66 Ill.Dec. 623, 443 N.E.2d 549."

The decision by Judge Gembala, in stating that "Moreover, this court is aware of no authority which would permit it to vacate an order of the Appellate Court." either was a statement made to deceive the parties
before the court, was contrary to known law, and was a fraud upon the court by Judge Gembala, or was a demonstration of his lack of competency, in violation of Rule 63(A), or was a demonstration of his failure to respect and comply with the law, in violation of Rule 62(A), Judges should not engage in fraud upon the court, issuing decisions that he knew, or should have known, under law were void and in violation of the Illinois Code of Judicial Conduct. JUDGE GEMBALA CANNOT CONFER JURISDICTION ON A COURT THAT LACKS JURISDICTION

Judge Gembala has no lawful authority to confer jurisdiction on any court that does not have subject-matter jurisdiction, yet Judge Gembala has attempted to confer jurisdiction on the Appellate Court upon which no subject-matter jurisdiction was ever conferred by law. Martin v. Schillo, 389 Ill. 607, 60 N.E.2d 392 (1945) ("Jurisdiction of the subject matter is always conferred by law.").

The law in Illinois is stated in the decisions of the Supreme Court of Illinois. Before the Appellate Court could rule on the Appeal, it first had to determine if the lower court held subject-matter jurisdiction. After its finding that there was no Petition in the record of the 91-D-5122 case, according to the prior decisions of the Illinois Supreme Court, as cited below, the only valid decision that it could make was that the trial court did not have subject-matter jurisdiction. Since the trial court was without subject-matter jurisdiction, the Appellate Court held no subject-matter jurisdiction and any ruling, other than to vacate the trial court's order as issued without subject- matter jurisdiction, was void. The Appellate Court's purported finding that the trial court held jurisdiction as to a cause of action was void ab initio since it's findings that there was no Petition in the record of the case deprived that court of any subject-matter jurisdiction to issue any order except an order to vacate the trial court's void judgment.

The Appellate Court was bound by the following Supreme Court decisions. In In re Contest of Elections for Governor, 93 Ill.2d 465 (1983), the court stated:

"The petition required to put the court in motion and give it jurisdiction must be in conformity with the statute granting the right and must contain all the statements which the statute says the petition shall state, - and if the petition fails to contain all of these essential elements the court is without jurisdiction. citing Brown v. VanKeuren, 340 Ill. 118 (1930)." [Emphasis added].

"The court derived its jurisdiction to proceed in a matter solely from statute, ordinary presumptions of jurisdiction do not obtain, and every
fact necessary to support such jurisdiction must appear from the face of the record." People v. Heizer, 36 Ill.2d 438, 223 N.E.2d 128 (1967) [Emphasis added.]

The trial court in case 91-D-5122 lacked authority to act for want of subject matter jurisdiction. People v. Brewer, 328 Ill. 472, 483 (1928) ("If it could not legally hear the matter upon the jurisdictional paper presented, its finding that it had the power can add nothing to its authority, -- it had no authority to make that finding.").

In I.C.R.R. Co. v. Hasenwinkle, 232 Ill. 224, 227 (1908), the court stated that "The law presumes nothing in favor of the jurisdiction of a court exercising special statutory powers, such as those given by statute under which the court acted, (Chicago and Northwestern Railway Co. v. Galt, 133 Ill. 657), and the record must affirmatively show the facts necessary to give jurisdiction. The record must show that the statute was complied with".

Judge Gembala knew, or should have known, that in all courts of limited jurisdiction, such as domestic relations, there is no presumption of subject-matter jurisdiction, People v. R.D.S., 94 Ill.2d 77, 84 (1983); People ex rel. Curtin v. Heizer, 36 Ill.2d 438 (1967), and that subject-matter jurisdiction can only be determined by an inspection of the full and complete record of the case. State Bank of Lake Zurich v. Thill, 113 Ill.2d 294, 497 N.E.2d 1156 (1986); Herb v. Pitcairn, 384 Ill. 237, 241 (1943). Contrary to law, Judge Gembala presumed subject-matter jurisdiction to have been conferred without an inspection of the full and complete record of the 91-D-5122 action.

Judge Gembala knew, or should have known that three Appellate Court Justices and the Chief Deputy Clerk of the Circuit Court of Cook County inspected the full and complete record of the case, and all four found that no Petition existed in the record of the case. Judge Gembala knew, or should have known that, under Illinois law, Herb v. Pitcairn, 384 Ill. 237, 241 (1943) ("A judgment void upon its face and requiring only an inspection of the record to demonstrate its invalidity is a mere nullity, in legal effect no judgment at all, conferring no right and affording no justification."), the inspection by the four parties substantiated that the record of the 91-D-5122 could not sustain a valid judgment. This finding has never been controverted, and Judge Gembala had no lawful authority to issue any ruling in violation of the law.

Judge Gembala knew, or should have known, that he did not have any lawful authority to overrule the findings of the Appellate Court Justices, but that under law he must accept their findings. Judge Gembala knew, or should have known, that the finding by the Appellate Court that
there was no Petition in the record of the case must be accepted by him, and he knew, or should have known, that he must rule based on the law that pertains to cases on which there is no Petition in the record of the case.

Judge Gembala knew, or should have known, that the Appellate Court acted without lawful authority and he knew, or should have known, that he could not utilize a void order in his decision. TRESPASSER OF THE LAW

Judge Gembala knew, or should have known, the law relative to void orders. Judge Gembala knew, or should have known that under the law in Illinois he was a trespasser of the law. Von Kettler et.al. v. Johnson, 57 Ill. 109 (1870) ("if the magistrate has not such jurisdiction, then he and those who advise and act with him, or execute his process, are trespassers."); Elliott v. Peirsol, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828).

Judge Gembala knew, or should have known, that he had no lawful authority to act directly or indirectly in such a manner that allowed a judgment to stand when the judge issuing that judgment had no subject-matter jurisdiction, He knew, or should have known, that he was conscientiously, arbitrarily, capriciously, deliberately, intentionally, and knowingly engaged in conduct supporting a void judgment in violation of the law. INTERFERENCE WITH LEGAL DUTY OF LITIGANT

Judge Gembala knew, or reasonably should have known that when he interfered with a litigant's legal rights and duty in case no. 96-CH-5651 to address the court, he engaged in actions in violation of the Appellate Courts' requirement that "a litigant has a duty, independent of that of his or her attorney, to follow the progress of the case and TO TAKE ACTION WHEN COUNSEL DOES NOT." [Emphasis added]. Sakun v. Taffer, 268 Ill.App.3d 343, 643 N.E.2d 1271 (1st Dist. 1994); Burton v. Estrada (1986), 149 Ill.App.3d 965, 972, 501 N.E.2d 254, citing Falcon Manufacturing Co. v. Nationwide Brokers, Inc. (1984), 123 Ill.App.3d 496, 499-500, 462 N.E.2d 562; American Consulting Association, Inc. v. Spencer (1981), 100 Ill.App.3d 917, 922-23, 427 N.E.2d 579.

Judge Gembala knew, or reasonably should have known that he conscientiously, arbitrarily, capriciously, deliberately, intentionally, and knowingly engaged in conduct that deprived the litigant of his due process rights, and that he conscientiously, arbitrarily, capriciously, deliberately, intentionally, and knowingly engaged in conduct to interfere with the litigant's legal duty as placed upon the litigant by the Appellate Courts. FAILURE TO VACATE VOID APPELLATE ORDER

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Judge Gembala knew, or reasonably should have known that no reviewing courts have any lawful authority to affirm or validate void judgments or orders. Judge Gembala knew, or reasonably should have known that the Illinois Supreme Court had no lawful authority to review or affirm the void Order of the Illinois Appellate Court. The Supreme Court acted correctly when it refused to hear the appeal of the Appellate Court, as it knew that it had no lawful authority to review an Appellate Court's void order.

Judge Gembala knew, or should have known, that he not only should have vacated the void order of the 91-D-5122 court based on the Complaint of the Plaintiff in the 96-CH-5651 case, but even has the lawful authority to vacate the void judgment of the 91-D-5122 action and the void judgment of the First District Appellate Court sua sponte on his own motion. People v. Thompson, 231 N.E.2d 605 (1967). EXCEEDED LAWFUL AUTHORITY

Judge Gembala knew, or should have known that void orders have no legal force or effect. Yet Judge Gembala engaged in conduct that attempted to make a void judgment valid, contrary to any and all known law. COVERUP OF THE UNLAWFUL ACT OF JUDGE-SHOPPING

Judge Gembala knew, or reasonably should have known, that the act of "judge-shopping" had occurred in the procurement of purported jurisdiction which vitiated the lawful authority of the 91-D-5122 judge. FRAUD UPON THE STATE OF ILLINOIS

Judge Gembala knew, or reasonably should have known, that he was engaged in the waste of judicial resources. The Respondent suggests that the waste of judicial resources is a fraud upon the State of Illinois. JUDGE GEMBALA SHOULD NOT AID AND ABET NOR PARTICIPATE IN CRIMINAL ACTIVITY

Judge Gembala knew, or reasonably should have known that by his delaying to vacate the void order, any execution on the void order could lead to a criminal act being performed by others, based on the void order, and that no judge should aid and abet criminal actions. Judge Gembala knew, or reasonably should have known that, should anyone execute on the void order and if such execution should interfere with interstate commerce, such as interfering with the Respondent's purchase of any items involved in interstate commerce, United States v. Murphy, 768 F.2d 1518 (7th Cir. 1985), then Judge Gembala would become a principal, 18 U.S.C. Section 1, in the interference with interstate commerce.

Extortion is defined in Black's Law Dictionary - 6th Edition as:
"The obtaining of property from another induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right."

Should anyone attempt to execute on the void judgment that Judge Gembala had, under his judicial responsibility, a duty to vacate, or the void judgment issued by Judge Gembala in case no. 96-CH-5651, then he would have personally aided and abetted a scheme of extortion and other criminal activity. Judge Gembala would then be involved in the unlawful act of racketeering, in violation of 18 U.S.C. Section 1951.

CONNIVANCE WITH THE CLERK OF THE CIRCUIT COURT OF COOK COUNTY IN COVERING UP THE DISAPPEARANCE OF COURT RECORDS

Judge Gembala knew, or should have known, that there is currently a dispute between the Chief Judge of the Circuit Court of Cook County and the Clerk of the Circuit Court of Cook County relative to the disappearance of court records. Judge Gembala was informed in the 96-CH-5651 action of the multiple filing of identical actions before the Circuit Court of Cook County and the facts of the missing court files.

Judge Gembala knew, or should have known, that under the Illinois Constitution, the Clerk of the Circuit Court of Cook County had the duty to preserve the full and complete records of all cases. He knew that the records of cases no. 90-D-2724 and 91-D-5122 were not preserved.

Judge Gembala knew, or should have known, that he engaged in, and connived in, actions to support the Clerk of the Circuit Court in her violation of her Constitutional and statutory duties to preserve the records of cases no. 90-D-2724 and 91-D-5122. CONCLUSION

Judge Francis A. Gembala has no respect for the law, does not comply with the law, does not install public confidence in the integrity and impartiality of the judiciary, is not faithful to the law, and does not maintain professional competence in the law. Further, he conscientiously, arbitrarily, capriciously, deliberately, intentionally, and knowingly: engaged in conduct in violation of his duty as a judge and of the Code of Judicial Conduct, engaged in actions in violation of the Supreme Law of the Land and the law of Illinois, engaged in acts of judicial treason, committed fraud upon the court, engaged in acts as a trespasser of the law, exceeded his lawful authority, engaged in actions to interfere with the litigant's legal duty imposed on the litigant by the Appellate Court, engaged in actions to coverup the unlawful act of judge-shopping, committed fraud upon the State of Illinois, aided and abetted criminal activity, and connived with the Clerk of the Circuit Court of Cook County in covering up the disappearance of court records.
I request that a full and complete investigation into the willful violations of the Code of Judicial Conduct by Judge Francis A. Gembala be made by the Judicial Inquiry Board.

Yours truly,
Eugene Alpern

On September 17, 1997 Judge Francis A. Gembala recused himself from case no. 91-D-5122. [NOTE: A judge may not recuse himself, under law, unless he is in violation of the Rules of Judicial Conduct. By recusing himself, Judge Francis A. Gembala has admitted that he was acting in violation of the Rules of Judicial Conduct.

Caught also received the following feedback regarding this complaint from CLR.ORG.

A judge may recuse himself to prevent a violation of the Rules of Judicial Conduct. While this may be true before the judge hears a matter, we suggest it is not true during the hearing of a matter and when the judge has already issued void orders.

What should also be taken into account is that there was no subject-matter jurisdiction nor in personam jurisdiction ever conferred upon the trial court at any time. In a statutory proceeding, the law states specifically that a Complaint/Petition that complies strictly with the statute under which the case is filed, must be filed and must be found in the record of the case.

The Appellate Court admits that there is no Petition in the record of the case. Evidence indicates that a valid Petition was never filed. The record of the case also provides no evidence that a valid summons was ever served upon the Respondent, or in fact, if there ever was a valid summons.

There are other reasons why the judge was without jurisdiction at any time. For the reasons stated, Judge Gembella was acting in violation of the law and of the Code of Judicial Conduct.

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Email: clr@clr.org