



# Void Judgments

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# Void Judgment

- The Courts have decreed, that Want of Jurisdiction makes;
  - ***“...all acts of judges, magistrates, U.S. Marshals, sheriffs, local police, all void and not just voidable.”***  
***Nestor v. Hershey, 425 F2d 504.***

# Voidable Judgment

- “One apparently valid, but in truth wanting in some material respect.” City of Lufkin v. McVicker, Tex.Civ.App., 510 S.W. 2d 141, 144.

# Do you know who you are?

- "Where there is no jurisdiction there is no judge; the proceeding is as nothing. Such has been the law from the days of the Marshalsea, 10 Coke 68; also **Bradley v. Fisher**, 13 Wall 335,351." **Manning v. Ketcham**, 58 F.2d 948.

# Do you know who you are?

- “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). Hobbs v. U.S. Office of Personnel Management, 485 F.Supp. 456 (M.D. Fla. 1980).

# Do you know who you are?

- “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).

# Do you know who you are?

- “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).
- “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).

# Do you know who you are?

- “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).

# Do you know who you are?

- **“brutum fulmen”**: “An empty noise; an empty threat. A judgment void upon its face which is in legal effect no judgment at all, and by which no rights are divested, and from which none can be obtained; and neither binds nor bars anyone. *Dollert v. Pratt-Hewitt Oil Corporation*, Tex.Civ.Appl, 179 S.W.2d 346, 348. *Also, see Corpus Juris Secundum, “Judgments” §§ 499, 512 546, 549. Black’s Law Dictionary, 4th Edition*

# Do you know who you are?

- **"Not every action by any judge is in exercise of his judicial function. It is not a judicial function for a Judge to commit an intentional tort even though the tort occurs in the Courthouse, when a judge acts as a Trespasser of the Law, when a judge does not follow the law, the judge loses subject matter jurisdiction and The Judge's orders are void, of no legal force or effect"! Yates Vs. Village of Hoffman Estates, Illinois, 209 F.Supp. 757 (N.D. Ill. 1962)**

# Do you know who you are?

- “Judge loses his absolute immunity from damage actions only when he acts in clear absence of all jurisdiction or performance of an act which is not judicial in nature.” Schucker v. Rockwood, 846 F.2d 1202

# Do you know who you are?

- “When enforcing mere statutes, judges of all courts do not act judicially (and thus are not protected by “qualified” or “limited immunity,” - SEE: *Owen v. City*, 445 U.S. 662; *Bothke v. Terry*, 713 F.2d 1404) - - “but merely act as an extension as an agent for the involved agency -- but only in a “ministerial” and not a “discretionary capacity...” *Thompson v. Smith*, 154 S.E. 579, 583; *Keller v. P.E.*, 261 US 428; *F.R.C. v. G.E.*, 281, U.S. 464. Immunity for judges does not extend to acts which are clearly outside of their jurisdiction. *Bauers v. Heisel*, C.A. N.J. 1966, 361 F.2d 581, Cert. Den. 87 S.Ct. 1367, 386 U.S. 1021, 18 L.Ed. 2d 457 (see also *Muller v. Wachtel*, D.C.N.Y. 1972, 345 F.Supp. 160; *Rhodes v. Houston*, D.C. Nebr. 1962, 202 F.Supp. 624 affirmed 309 F.2d 959, Cert. den 83 St. 724, 372 U.S. 909, 9 L.Ed. 719, Cert. Den 83 S.Ct. 1282, 383 U.S. 971, 16 L.Ed. 2nd 311, Motion denied 285 F.Supp. 546).

# Do you know who you are?

- **“...where any state proceeds against a private individual in a judicial forum it is well settled that the state, county, municipality, etc. waives any immunity to counters, cross claims and complaints, by direct or collateral means regarding the matters involved.”** Luckenback v. The Thekla, 295 F 1020, 226 Us 328; Lyders v. Lund, 32 F2d 308;

# Do you know who you are?

- “the government is but an agency to the state,” -- the state being the sovereign people. *State v. Chase, 175 Minn, 259, 220 N.W. 951, 953.*

# Do you know who you are?

- "When acting to enforce a statute and its subsequent amendments to the present date, the judge of the municipal court is acting as an administrative officer and not in a judicial capacity; courts administering or enforcing statutes do not act judicially, but merely ministerially." *Thompson v. Smith* 154 SE 583.
- "Ministerial officers are incompetent to receive grants of judicial power from the legislature, their acts in attempting to exercise such powers are necessarily nullities" *Burns v. Sup., Ct., SF*, 140 Cal. 1.

# Void Judgments - England

- In *Anlaby v. Praetorius* (1888) 20 Q.B.D. 764 at 769 Fry L.J. stated on the issue of void proceedings that:

**“A plaintiff has no right to obtain any judgment at all”.**

# Void Judgments - England

- In *Fry v. Moore* (1889), 23 Q.B.D. 395 Lindley, L.J. said of void and irregular proceedings that it may be difficult to draw the exact line between nullity and irregularity. If a procedure is irregular it can be waived by the defendant but if it is null it cannot be waived and all that is done afterwards is void; in general, one can easily see on which side of the line the particular case falls.

# Void Judgments - England

- A void order results from a 'fundamental defect' in proceedings (Upjohn LJ in *Re Pritchard (deceased)* [1963] 1 Ch 502 and Lord Denning in *Firman v Ellis* [1978] 3 WLR 1) or from a 'without jurisdiction' / *ultra vires* act of a public body or judicial office holder (Lord Denning in *Pearlman v Governors of Harrow School* [1978] 3 WLR 736).

# Void Judgments - England

- A 'fundamental defect' includes a failure to serve process where service of process is required (Lord Greene in *Craig v Kanssen* [1943] 1 KB 256); or where service of proceedings never came to the notice of the defendant at all (e.g. he was abroad and was unaware of the service of proceedings); or where there is a fundamental defect in the issuing of proceedings so that in effect the proceedings have never started; or where proceedings appear to be duly issued but fail to comply with a statutory requirement (Upjohn LJ in *Re Pritchard* [1963]). Failure to comply with a statutory requirement includes rules made pursuant to a statute (*Smurthwaite v Hannay* [1894] A.C. 494).

# Void Judgments - England

- A ‘without jurisdiction’/*ultra vires* act is any act which a Court did not have power to do (Lord Denning in *Firman v Ellis* [1978]).

# Void Judgments - England

- In *Peacock v Bell and Kendal* [1667] 85 E.R. 81, pp.87:88 it was held that nothing shall be intended to be out of the jurisdiction of a Superior Court, but that which specially appears to be so; and nothing shall be intended to be within the jurisdiction of an Inferior Court but that which is so expressly stated.

# Void Judgments - England

It is important to note therefore that in the case of orders of Courts with unlimited jurisdiction, an order can never be void unless the 'unlimited jurisdiction' is 'limited' in situations where it is expressly shown to be so. In the case of orders of the Courts of unlimited jurisdiction where the jurisdiction is not expressly shown to be limited, the orders are either irregular or regular. If irregular, it can be set aside by the Court that made it upon application to that Court and a person affected by the irregular order has a right -ex debito justitiae - to have it set aside. If it is regular, it can only be set aside by an appellate Court upon appeal if there is one to which an appeal lies (Lord Diplock in *Isaacs v Robertson* (1984) 43 W.I.R. PC at 128-130). However, where the Court's unlimited jurisdiction is shown to be limited (for example: a restriction on the Court's power by an Act of Parliament or Civil or Criminal Procedure Rule) (*Beesley v Bell and Kendall* [1966-7]; Halsbury's Laws of

# Void Judgments - England

- Similarly, if the higher Court's order is founded on a lower Court's void act or invalid claim then the higher Court's decision will also be void (Lord Denning in *MacFoy v United Africa Co. Ltd.* [1961] 3 All ER).

# Void Judgments - England

a 'void' order or claim has no legal effect *ab initio* (from the beginning/outset) and therefore does not need to be appealed, although for convenience it may sometimes be necessary to have it set aside (Lord Denning in *MacFoy v United Africa Co. Ltd.* [1961] and *Firman v Ellis* [1978]) whereas a 'voidable' order or claim has legal effect unless and until it is set aside. Therefore, while a void order or claim does not have to be obeyed and can be ignored and its nullity can be relied on as a defence when necessary (*Wandsworth London Borough Council v. Winder* [1985] A.C. 461), a voidable order or claim has to be obeyed and cannot be ignored unless and until it is set aside; and

# Void Judgments - England

- a 'void' order can be set aside by the Court which made the order because the Court has inherent jurisdiction to set aside its own void order (Lord Greene in *Craig v Kanssen* [1943]) whereas a 'voidable' order can only be set aside by appeal to an appellate Court.

# Void Judgments - England

- A person affected by both a void or voidable order has the right – *ex debito justitiae* – to have the order set aside (which means that the Court does not have discretion to refuse to set aside the order or to go into the merits of the case) (Lord Greene in *Craig v Kanssen* [1943])

# Void Judgments - England

- The procedure for setting aside a void order is by application to the Court which made the void order, although it can also be set aside by appeal although an appeal is not necessary (Lord Greene in *Craig v Kanssen* [1943]) or it can be quashed or declared invalid by Judicial Review (where available) and where damages may also be claimed.

# Void Judgments - England

- Although an appeal is not necessary to set aside a void order, if permission to appeal is requested and if out of time the Court should grant permission because time does not run because the order is void and the person affected by it has the right to have it set aside (Lord Greene in *Craig v Kanssen* [1943]).

# Void Judgments - England

- A void order is incurably void and all proceedings based on the invalid claim or void act are also void. Even a decision of the higher Courts (High Court, Court of Appeal and Supreme Court) will be void if the decision is founded on an invalid claim or void act, because something cannot be founded on nothing (Lord Denning in *MacFoy v United Africa Co. Ltd.* [1961])

# Void Judgments - England

- A void order is void even if it results in a failure of natural justice or injustice to an innocent third party (Lord Denning in *Wiseman v Wiseman* [1953] 1 All ER 601).

# Void Judgments - England

- It is never too late to raise the issue of nullity and a person can ignore the void order or claim and raise it as a defence when necessary (*Wandsworth London Borough Council v. Winder* [1985] A.C. 461; *Smurthwaite v Hannay* [1894] A.C. 494; Upjohn LJ in *Re Pritchard (deceased)* [1963]; Lord Denning in *MacFoy v United Africa Co. Ltd.* [1961]).

# Void Judgments - England

- In *R v. Clarke and McDaid* [2008] UKHL8 the House of Lords confirmed that there is no valid trial if the bill/Indictment has not been signed by an appropriate officer of the Court because Parliament intended that the Indictment be signed by a proper officer of the Court.

# Maxims of Law

- **A thing void in the beginning does not become valid by lapse of time. 1 S. & R. 58**

# Maxims of Law

- **Time cannot render valid an act void in its origin.**  
Dig. 50, 17, 29; Broom, Max. 178

# Maxims of Law

- **Things invalid from the beginning cannot be made valid by subsequent act.**  
Trayner, Max. 482.

# Maxims of Law

- **Once a fraud, always a fraud. 13 Vin. Abr. 530.**

# Maxims of Law

- **“Quod alias bonum et justum est, si per vim vei fraudem petatur, malum et injustum efficitur. What is otherwise good and just, if sought by force or fraud, becomes bad and unjust. 3 Co. 78.”** Bouvier’s Maxims of Law, 1856

# Conclusion

- **"It behooves every man who values liberty of conscience for himself, to resist invasions of it in the case of others: or their case may, by change of circumstances, become his own" Thomas Jefferson**

# Conclusion

- **"If Ye love wealth better than liberty, the tranquility of servitude, better than the animating contest of freedom, go home from us in peace. We ask not your counsel or arms. Crouch down and lick the hands which feed you. May your chains set lightly upon you, and may our posterity forget that you were ever our countrymen."** Samuel Adams, "the father of the American revolution", member of "The sons of Liberty (the group that did the Boston Tea Party)" Quoted from the debates of 1776

# Conclusion

- Do you know who you are?

# Never give up!

