

## CHALLENGE JURISDICTION

Challenging jurisdiction is one of the best defenses you can make, because if you use the right argument it is almost impossible for you to lose!

If they attempt to tell you that you can't question their jurisdiction you can easily shut them up with these court rulings!

**“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. US, 505 F2d 1026.

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.

Read US v Lopez and Hagans v Levine both void because of lack of jurisdiction. In Lopez the circuit court called it right, and in Hagans it had to go to the Supreme court before it was called right, in both cases, void. Challenge jurisdiction and motion to dismiss, right off the bat. If you read the supreme Court cases you will find that jurisdiction can be challenged at any time and in the case of Lopez it was a jury trial which was declared void for want of jurisdiction. If it [jurisdiction] doesn't exist, it can not justify conviction or judgment. ...without which power (jurisdiction) the state CANNOT be said to be “sovereign.” At best, to proceed would be in “excess” of jurisdiction which is as well fatal to the State's/USA's cause. Broom v. Douglas, 75 Ala 268, 57 So 860 the same being jurisdictional facts FATAL to the government's cause (e.g. see In re FNB, 152 F 64).

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).

**“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).

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

**“Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted.”** Latana v. Hopper, 102 F. 2d 188; Chicago v. New York 37 F Supp. 150

**“The law provides that once State and Federal Jurisdiction has been challenged, it must be proven.”** Main v. Thiboutot, 100 S. Ct. 2502 (1980)

**“Jurisdiction can be challenged at any time.”** and “Jurisdiction, once challenged, cannot be assumed and must be decided.” 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.

**“There is no discretion to ignore that lack of jurisdiction.”** Joyce v. US, 474 F2d 215.

**“The burden shifts to the court to prove jurisdiction.”** Rosemond v. Lambert, 469 F2d 416.

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

“Jurisdiction is fundamental and a judgment rendered by a court that does not have jurisdiction to hear is void ab initio.” In Re Application of Wyatt, 300 P. 132; Re Cavitt, 118 P2d 846.

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

**“A court has no jurisdiction to determine its own jurisdiction**, for a basic issue in any case before a tribunal is its power to act, and a court must have the authority to decide that question in the first instance.” Rescue Army v. Municipal Court of Los Angeles, 171 P2d 8; 331 US 549, 91 L. ed. 1666, 67 S.Ct. 1409.

“A departure by a court from those recognized and established requirements of law, however close apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is an excess of jurisdiction.” Wuest v. Wuest, 127 P2d 934, 937.

**“Where a court failed to observe safeguards, it amounts to denial of due process of law, court is deprived of juris.”** Merritt v. Hunter, C.A. Kansas 170 F2d 739.

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

## Vehicle/Traffic

“An action by Department of Motor Vehicles, whether directly or through a court sitting administratively as the hearing officer, must be clearly defined in the statute before it has subject matter jurisdiction, without such jurisdiction of the licensee, all acts of the agency, by its employees, agents, hearing officers, are null and void.” Doolan v. Carr, 125 US 618; City v Pearson, 181 Cal. 640.

“Agency, or party sitting for the agency, (which would be the magistrate of a municipal court) has no authority to enforce as to any licensee unless he is acting for compensation. Such an act is highly penal in nature, and should not be construed to include anything which is not embraced within its terms. (Where) there is no charge within a complaint that the accused was employed for compensation to do the act complained of, or that the act constituted part of a contract.” Schomig v. Kaiser, 189 Cal 596.

“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 in administering or enforcing statutes do not act judicially, but merely ministerially”. Thompson v. Smith, 154 SE 583.

“A judge ceases to sit as a judicial officer because the governing principle of administrative law provides that courts are prohibited from substituting their evidence, testimony, record, arguments, and rationale for that of the agency. Additionally, courts are prohibited from substituting their judgment for that of the agency. Courts in administrative issues are prohibited from even listening to or hearing arguments, presentation, or rationale.” ASIS v. US, 568 F2d 284.

**“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.

The elementary doctrine that the constitutionality of a legislative act is open to attack only by persons whose rights are affected thereby, applies to statute relating to administrative agencies, the validity of which may not be called into question in the absence of a showing of substantial harm, actual or impending, to a legally protected interest directly resulting from the enforcement of the statute.” Board of Trade v. Olson, 262 US 1; 29 ALR 2d 105.

## Self study

Get know the word “**jurisdiction**”

Do a Google® search. You will find several more court cites you may choose to use.

Visit your local law library and discover the various resources available.

Obtain a copy of Black’s Law Dictionary, preferably any one from the First through the Fifth Editions. The Sixth is not as complete, and [in this editor’s humble opinion] the Seventh and Eight are just not worth your time or money. Example, look up the term “United States” and notice that it is in the First through the Fifth Editions and not in subsequent editions. It is an interesting study to see how a word, or phrase, is defined in earlier versions versus later editions – **and it is better to know the earlier version**. (The dumbing down of Americans is a national tragedy.)

Preview of coming attractions:

HAZEL-ATLAS GLASS CO. v. HARTFORD-EMPIRE CO., 322 U.S. 238 (1944)

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