1978

Requisites of a Valid Judgment

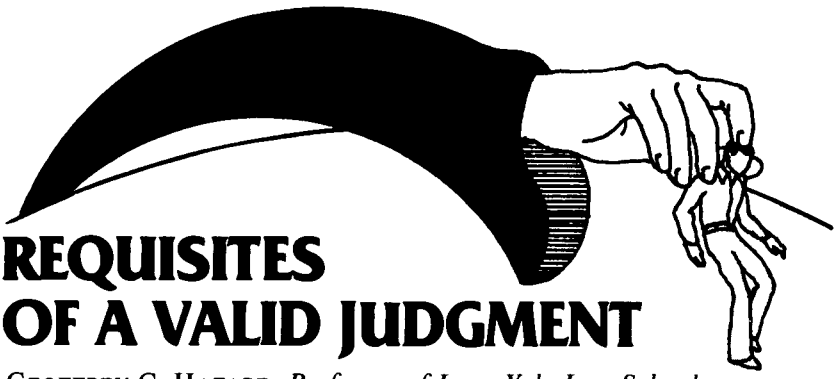
Geoffrey C. Hazard Jr.
UC Hastings College of the Law, hazardg@uchastings.edu

Author: Geoffrey C. Hazard, Jr.

Source: The Practical Lawyer

Citation: 24 PRAC. LAW. 35 (1978).

Title: *Requisites of a Valid Judgment*



REQUISITES OF A VALID JUDGMENT

GEOFFREY C. HAZARD, *Professor of Law, Yale Law School, New Haven, Connecticut*

Before a court properly may undertake an adjudication, three requirements must be met. First, the persons whose interests are to be adjudicated must be given adequate notice of the proceeding and an opportunity to be heard. Second, the court must have territorial jurisdiction of the controversy. A court's territorial jurisdiction is limited by the United States Constitution and may further be limited by statute or rule of court. Third, the court must have authority to adjudicate the type of controversy presented to it. This authority is generally referred to as subject matter jurisdiction and at times as competence or competency.

The failure of any of these requirements is a ground for objection to the maintenance of the proceeding in the court in which it has been brought. When the objection concerns the notice that was afforded and is taken in the original action, it must be made at the threshold of the proceeding; a litigant who responds on the merits or otherwise participates without properly having objected to the notice is deemed to have waived the objection. The same is true of an objection concerning the court's territorial jurisdiction. *E.g., Everitt v. Everitt*, 4 N.Y.2d 13, 148 N.E.2d 891, 171 N.Y.S.2d 836 (1958). *See generally* Thode, *In Personam Jurisdiction; Article 2031 B, the Texas "Long Arm" Jurisdiction Statute; and the Appearance To Challenge Jurisdiction in Texas and Elsewhere*, 42 Tex. L. Rev. 279 (1964). An objection to the court's subject matter jurisdiction may also be asserted as a preliminary matter. However, the generally recognized rule is that such an objection may also be raised

This article is the Introductory Note to Chapter 2 of the American Law Institute's Tentative Draft No. 5 of the RESTATEMENT (SECOND) OF JUDGMENTS.

35

at any time before final judgment or on appeal from the judgment. *Mansfield, Coldwater & Lake Michigan Ry. v. Swan,* 111 U.S. 379 (1884).

If an objection to notice or to territorial jurisdiction is raised in the original action and is adjudicated, the determination is thereafter conclusive. *Baldwin v. Iowa State Traveling Men's Ass'n,* 283 U.S. 522 (1931). With qualifications, the same principle applies to an objection concerning the subject matter jurisdiction of the court. *Durfee v. Duke,* 375 U.S. 106 (1963). The principle involved sometimes is stated to be that a court has jurisdiction to determine its own jurisdiction.

A more difficult problem is whether the lack of any of these basic requirements can be asserted after rendition of the judgment. In this connection it is necessary to make two distinctions. One is between a judgment rendered after an appearance of some kind and a judgment that has been rendered upon default. The other is between the requirements of notice and of territorial jurisdiction, on the one hand, and the requirement of subject matter jurisdiction on the other hand.

APPEARANCE AND DEFAULT • When an appearance has been made and the action then goes to judgment, objections to adequacy of notice or to territorial jurisdiction may not thereafter be taken. This results from the legal consequences of appearance. An appearance may have the purpose, or include the purpose, of asserting an objection to notice or to territorial jurisdiction. If the appearance is made in conformity with the procedure for making such an objection, it does not constitute a submission to the authority of the court. *E.g., Dragor Shipping Corp. v. Union Tank Car Co.,* 378 F.2d 241 (9th Cir. 1967). But it does result in tendering the matters of notice and territorial jurisdiction to the court in which the action has been brought. The court's decision of those matters thereby becomes a matter adjudicated and is conclusive under the rules of res judicata. *Baldwin v. Iowa State Traveling Men's Ass'n,* 283 U.S. 522 (1931).

Furthermore, if an appearance is made in such a way as to constitute admission of the authority of the court, it is called a general appearance. *E.g., Cuellar v. Cuellar,* 406 S.W.2d 510 (Tex. Civ. App. 1966). Such an appearance itself terminates the opportunity to raise the questions of notice and territorial jurisdiction. Hence, when a defendant appears in an action, whatever the form of his appearance, the questions of notice and territorial jurisdiction will have been resolved before entry of judgment.

The situation is quite different when judgment is by default for

want of appearance. By hypothesis, the defendant has appeared neither to object to notice or jurisdiction nor to defend on the merits. Yet even after final judgment he may object to the adequacy of notice or to territorial jurisdiction.The objection may be made when a suit is brought upon the judgment in a court other than that in which the judgment was rendered. *See, e.g., Conn v. Whitmore,* 9 Utah 2d 250, 342 P.2d 871 (1959). It may also be made through a motion or other application for relief in the court where the judgment was rendered. *See, e.g., United States v. Karahalias,* 205 F.2d 331 (2d Cir. 1953). Thus, only when the judgment is by default is there ordinarily a possibility that the requirements of notice and territorial jurisdiction will be challenged through an attack on the judgment after it has been rendered.

The rules governing objections to subject matter jurisdiction in certain respects parallel those governing objections to adequacy of notice and territorial jurisdiction. Thus, an objection to subject matter jurisdiction may be raised in the original action, either at the threshold of the litigation or later on. If the objection is raised, the determination of the objection is generally conclusive in subsequent litigation. Similarly, if judgment is by default, the question of subject matter jurisdiction ordinarily may be raised by subsequent attack on the judgment, much as objections to adequacy of notice and territorial jurisdiction may so be asserted. *Cf. Rose v. Eliott,* 70 F.R.D. 422 (E.D. Tenn. 1976). The divergence in treatment of the requirement of subject matter jurisdiction arises when judgment has been rendered after an appearance but the question was not raised during the course of the proceedings.

It was formerly the rule that the court's subject matter jurisdiction could still be challenged in a subsequent attack on the judgment. *See generally* Note, *Filling the Void: Judicial Power and Jurisdictional Attacks on Judgments,* 87 Yale L.J. 164 (1977). The underlying proposition was that a judgment of a court that lacks subject matter jurisdiction is a legal nullity. The modern rule is that such a post-judgment attack on the court's subject matter jurisdiction may be made only in impelling circumstances that justify lifting the rule of bar.

VALIDITY • In traditional terminology, the three requirements that must exist before a court may properly undertake an adjudication—notice, territorial jurisdiction, and subject matter jurisdiction—are said to determine the validity of the judgment. Correlatively, in the absence of any of these requirements, the judgment is said to be *void.* This terminology implies that a proceeding with respect to which one of the three

requirements is lacking is vulnerable to attack not only during its pendency but also—because it is *void*—at any time thereafter.

Up to a point, this is correct. The questions of notice, territorial jurisdiction, and subject matter jurisdiction have special procedural status in that, unlike other defenses, they are not ordinarily foregone by default in the original action. Thus, it is accurate to say that a default judgment rendered without adequate notice, or by a court lacking the required territorial connection to the matter under adjudication, or by a court lacking subject matter jurisdiction, is *void,* in that it is vulnerable to attack in a subsequent proceeding. On the other hand, if the judgment is not by default, when it has become final it is invulnerable to attack on the ground of inadequacy of notice or lack of territorial jurisdiction. Ordinarily, it is also invulnerable to attack for lack of subject matter jurisdiction.

Yet even when a judgment is subject to attack on one of these grounds, it does not follow that it may be disregarded for all legal purposes. The implications of the concept of *voidness* vary according to procedural context. Thus, in connection with appellate review of determinations that are not otherwise reviewable, the concept is sometimes used as a basis for issuance of writs of mandamus and prohibition to control abuses of authority by a subordinate tribunal. *E.g., Themtron Products, Inc. v. Hermansdorfer,* 423 U.S. 336 (1976). In connection with judgments imposing incarceration, the concept of *voidness* has been used to justify post-judgment relief through the writ of habeas corpus. *E.g., Townsend v. Sain,* 372 U.S. 293 (1963). In these and other contexts, the judgment may be held *void* in that it may be opened for redetermination of one or another of the issues supporting it. But the judgment may retain *validity* for the purpose of immunizing action taken by a party or a third person in reliance on the judgment. *E.g., Nuernberger v. State,* 41 N.Y.2d 111, 359 N.E.2d 412, 390 N.Y.S.2d 904 (1976).

Hence, in a variety of situations, a judgment may be treated as valid for some purposes, and void for others. Even the question whether a controversy that has gone to judgment should be opened for relitigation may be answered one way when interests of reliance on the judgment have intervened and another when they have not.

In view of the qualifying specifications that must be introduced in order appropriately to use the terms *valid* and *void* with reference to a judgment, these terms have limited utility. It may be said in general terms that a judgment is valid only if it is based upon adequate notice and is rendered by a court having territorial jurisdiction and invested with

authority to adjudicate the type of controversy involved. Nevertheless, it should be recognized that the terms *valid* and *void* state a result instead of explaining it. They are shorthand expressions, useful if carefully employed, for saying whether or not a judgment is so affected by a fundamental infirmity that the infirmity can be raised even after judgment.

TERRITORIAL JURISDICTION • The term "territorial jurisdiction" refers to the connection between the territorial authority of the court and the action that has been brought before it. *Shaffer v. Heitner,* 97 S. Ct. 2569 (1977). Courts are constituted by governments, including national governments within the international community and state governments within our federal union. The governments themselves have an authority that is defined by reference to their legal boundaries or territorial limits. Hence, the authority of the courts constituted by them is correspondingly defined, as least in part, in territorial terms.

Historically, the territorial jurisdiction of courts was based upon the presence of a person or thing within the legal boundaries of the government that created the court. *Pennoyer v. Neff,* 95 U.S. 714 (1877). When a person was within those boundaries, jurisdiction described as *in personam* could be exercised over him; when a thing was within those boundaries, jurisdiction described as *in rem* or *quasi in rem* could be exercised to determine interests in the thing.

Presence of the person or thing remains of significance in the law of territorial jurisdiction. Generally speaking, the rule remains that enforcement of a judgment may be effectuated only by executive officials such as the sheriff or marshal of the government in which the enforcement is undertaken. Hence, outside the territorial limits of a court's jurisdiction, the coercive effectiveness of its judgment depends upon the judgment being given recognition by the authorities of another government. This recognition may be given under a principle of comity, by virtue of legal provisions such as the Full Faith and Credit Clause of the Constitution, or the terms of a treaty between nations concerning reciprocal recognition of judgments. This means that for enforcement purposes outside its territorial limits, a court's judgment, even though final, is not of its own legal authority the last word in providing legal redress in the matter adjudicated. Correlatively, the practical effectiveness of a judgment against someone or something outside the court's territorial jurisdiction depends upon cooperation of another government.

The presence of a person or thing remains of significance in the law of

territorial jurisdiction for yet another reason. Governments share the purpose of assuring that a party with a valid legal claim can find some forum in which to obtain effective redress. Failure to provide legal remedies for wholly domestic disputes can lead to civic demoralization and disturbance of the peace through resort to self-help; the same thing can happen concerning disputes whose incidents occur in the territory of more than one government. Broadly speaking, it is therefore a concern of every government to provide a forum for redress if no better forum can be found, *i.e.*, a forum of last resort.

The point of last resort is reached if the defendant, by ignoring or avoiding process addressed to him or his property, has made it necessary to use actual coercion to exact redress from him. Actual coercion, in the form of arrest of his person or seizure of his property, is effectuated by executive officials and not by the judiciary itself. But such officials ordinarily are authorized to employ arrest or seizure in a civil action only under authority of directions emanating from a court created by the government by which they were appointed. When redress requires immediate use of such coercive measures, it therefore has to be sought in a court within whose territorial limits is located the person or thing to which the coercive measures are to be applied.

This is an explication of Holmes' famous dictum that "[t]he foundation of jurisdiction is physical power." *McDonald v. Mabee,* 243 U.S. 90, 91 (1917). Jurisdiction based on power over the person or thing is thus justified at least in the extreme case where the moral authority of the judicial process is ignored or denied. Historically, the extreme case was perhaps not an unusual case. In any event, before the development of modern transportation and communications, the presence of a person or thing within a court's territorial jurisdiction usually coincided with the fact that transactions involving the person or thing also occurred there. Presence thus signified not only the immediate availability of executive power to enforce a judgment, but also, in the usual case, that the transaction in suit had some connection with the place where it was brought.

In the course of the last century, the significance of presence of person or thing as a basis of territorial jurisdiction has diminished. Courts are far readier than in the past to give recognition to judgments of sister jurisdictions without going behind them to reexamine the merits. Of course, since the adoption of the Constitution, the Full Faith and Credit Clause has required each state to recognize the judgment of a sister state. It seems fair to say, however, that the Full

Faith and Credit Clause is now not merely accepted by the states but appreciated by them as providing vital legal support for the efficacy of their own judgments in an increasingly mobile society. This is evidenced in the attitude of state courts toward recognition of sister state judgments that have been held to be outside the purview of the Full Faith and Credit Clause, notably child custody decrees. *See, e.g., Ferreira v. Ferreira,* 9 Cal. 3d 824, 512 P.2d 304, 109 Cal. Rptr. 80 (1973).

Moreover, a similar attitude is shown toward the judgments of other countries, where the principle of comity appears to be becoming infused with a comparable firmness. *Somportex, Ltd. v. Philadelphia Chewing Gum Corp.,* 453 F.2d 435 (3d Cir. 1971), *cert. denied,* 405 U.S. 1017 (1972). Still further, the procedure of registry of judgments is being more widely adopted. In this procedure, a judgment of one jurisdiction can be transformed into a locally enforceable judgment through a simple summary action. *See* Uniform Enforcement of Foreign Judgments Act.

The cumulative effect of these developments is that a judgment of one court system now generally will receive full recognition elsewhere with a minimum of hesitation and procedural complication. In the ordinary interstate case, the practical efficacy of a judgment has thus become independent of the capability of immediately enforcing it through local officials. Correspondingly, the presence of the person or thing against whom such enforcement measures may be taken has become of diminished significance in the principles of territorial jurisdiction.

In this perspective, the development of the modern law of territorial jurisdiction may be better comprehended. In *International Shoe Co. v. Washington,* 326 U.S. 310 (1945), the Supreme Court held that presence is not necessary for the exercise of in personam jurisdiction, stating that the significant question was whether, in the context of our federal system of government, the defendant has "minimum contacts . . . such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" 326 U.S. at 316. Under the *minimum contacts* principle, presence is not irrelevant, especially when the forum within whose territory the defendant is present is the only one that can provide the plaintiff redress. *See, e.g., Perkins v. Benquet Consolidated Mining Co.,* 342 U.S. 437 (1952). But under the regime of *International Shoe,* the courts, while continuing to recognize presence as a basis for in personam jurisdiction, have given increasing weight to the relationship between the forum and the transaction in suit.

With the law of jurisdiction hav-

ing assumed this posture, the Supreme Court announced its decision in *Shaffer v. Heitner,* 97 S.Ct. 2569 (1977). That case held that the exercise of jurisdiction over intangible property was governed by the principle of *minimum contacts* and hence the local presence of the thing was not itself a sufficient basis of attachment jurisdiction. This is the first Supreme Court decision making *minimum contacts* not only a sufficient basis for jurisdiction, but also a necessary condition.

The portent of this decision is difficult to gauge. At the least, it means that *attachment jurisdiction,* possibly excepting cases involving attachment of real property, may not be exercised merely by virtue of the local situs of the seized property. Compare the opinions of Justices Powell and Stevens, concurring in *Shaffer v. Heitner.* Very likely, it means that all exercises of jurisdiction based on presence of property will require either that the transaction in suit have some relation to the forum or that there be some special justification for the plaintiff's use of the remedy of prejudgment seizure of defendant's property. Compare the line of decisions following *Fuentes v. Shevin,* 407 U.S. 67 (1972). At the same time, the logic of the decision in *Shaffer v. Heitner* fairly implies that the presence of a person, without more, may no longer be a sufficient basis for in personam jurisdiction.

NOTICE • Under the doctrine of *Pennoyer v. Neff,* 95 U.S. 714 (1877), the problem of notice in actions in personam largely solved itself. The presence of the defendant within the court's territorial boundaries was a sufficient basis for exercising jurisdiction over him. Common law procedure required that the defendant be found by a process-server conveying a summons, which effectuated notice. However, the law of service of process evolved to include various forms of substituted service, such as delivery to the defendant's agent or to a person at the defendant's place of business or abode. As it did, there was some uncertainty about whether all forms of substituted service should be regarded as equivalent to personal service in their notice-giving effect. *Compare, e.g., Wuchter v. Pizzutti,* 272 U.S. 13 (1928) (service on statutory "agent" of non-resident motorist without notice to the motorist himself held to be invalid), *with Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court of Washington for Spokane County,* 289 U.S. 361 (1933) (service on statutory "agent" of foreign corporation held to be valid). But seasonably it was settled that substituted service in actions in personam was effective only if it had a substantial likelihood of conferring actual notice. *See Mullane v. Central Hanover Bank & Trust Co.,* 339

U.S. 306, 314 (1950), and *Milliken v. Meyer,* 311 U.S. 457 (1940).

In proceedings in rem, the question of notice historically was more troublesome. Hazard, *A General Theory of State Court Jurisdiction,* 1965 Sup. Ct. Rev. 241. In principle it had long been recognized that reasonable notice was a fundamental element of procedural fairness. On the other hand, the theory that a court could not exercise authority beyond its territorial limits created difficulty in giving effect to this principle. When the owner or claimant of the property was within the state's territorial jurisdiction, notice could be directed to him and most in rem procedures required something of the sort. Owners or claimants outside the territory, however, were regarded as outside the range of the court's legal reach; to require that they receive official notice would have violated the premise that a state could not exercise legal authority outside its boundaries. Moreover, the authors of state legislation prescribing the notice requirements in proceedings in rem were perhaps not fully sensitive to the interests of non-residents. Instead, the fiction was indulged that the property was in the hands of a custodian who would warn the owner if the property were seized in legal proceedings. Seizure of the property was thereby treated as giving notice to interested persons.

In *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306 (1950), and cases following it, the notice requirement was radically modified. *Mullane* held that even when jurisdiction was based on presence of property and the proceeding was one in rem, the notice procedure had to be "reasonably certain to inform those affected." 339 U.S. at 315. As the law has since developed, there remain a few unsettled questions in the application of this principle. For example, it has been argued that notice need not be given of proceedings of which the person to be notified is almost certain to become otherwise aware, such as property tax foreclosures against the person responsible for paying the tax. It is settled, however, that notice need not actually be conveyed to the person involved; it is enough that the procedure yields a high probability of giving actual notice.

Under the modern interpretation of the Due Process Clause, it therefore can be said that fair notice has become at least as important in the hierarchy of legal values as the principle of territorial jurisdiction. The requirement of territorial jurisdiction was always one that could be waived, except perhaps in limited classes of cases such as divorce proceedings. No transcending public policy required observance of territorial jurisdictional limits when a party saw fit not to raise an

objection concerning them. On the other hand, the *Mullane* principle has transformed the notice requirement from a formality into an essential.

SUBJECT MATTER JURISDICTION • The term *subject matter jurisdiction* refers to the rules that invest a particular court or other tribunal with authority to decide various kinds of legal controversies. That authority is also sometimes referred to as *competence* or *competency*. *See Restatement (Second) of Conflict of Laws* § 92 (1971).

Whatever term is used, the concept of authority to decide a particular type of legal controversy is sometimes difficult or impossible to distinguish from that of territorial jurisdiction. For example, when reference is made to a court's authority to determine a matter of status or interests in property, it can be said that the state's connection to the status or the property is a matter of territorial jurisdiction or of subject matter jurisdiction. Indeed, sometimes the distinction can be intelligently made only by consideration of the differences in consequence that follow from the classification. If the matter is regarded as one of territorial jurisdiction, it is waived by the parties if they do not make proper threshold objection in the original action. If the matter is regarded as one of subject matter jurisdiction, the parties do not inevitably waive it by litigating the merits and the court may raise the question on its own motion. The classifications arrived at by the courts do not appear to be wholly consistent. *Compare Granville-Smith v. Granville-Smith,* 349 U.S. 1 (1955), *with Sherrer v. Sherrer,* 334 U.S. 343 (1948).

This question of classification illustrates the most important res judicata problem posed by the rules of subject matter jurisdiction—whether a judgment rendered without objection to subject matter jurisdiction may thereafter be challenged on the ground that the court lacked such jurisdiction. The traditional doctrine, by no means consistently applied in the cases, was that a judgment could always be so attacked. The doctrine rested on the principle that a judgment of a court lacking any pretense to authority is a legal nullity. That principle is sound. But the principle does not entail some of the corollaries often associated with it, for example, that a judgment is no less a nullity because the court appeared to have subject matter jurisdiction on the facts presented to it. The problem remains of striking the proper balance between the principle that the authority of a judgment depends on the authority of the court that rendered it and the principle that a judgment ought to be final when fair opportunity to litigate has been afforded.