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STATE JURISDICTION

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I. [§1.1] INTRODUCTION

Jurisdiction should be addressed strategically, to wit: it is both a sword and a shield, with the ability to affect the outcome of litigation, whether for the plaintiff or the defendant. When assessing how and whether to invoke the jurisdiction of a particular tribunal (be it state or federal court, or private arbitration) attention should be given to several critical evaluations:

- Have the parties previously consented to particular jurisdiction? If so, is there a reason to challenge it (*i.e.*, fraudulent inducement of the contract containing the jurisdiction consent)?
- If there is concurrent jurisdiction over the parties or the matter, what is to be gained by choosing one jurisdiction over another?
- Is one particular forum more expedient or efficient for this matter?
- Does the law of a particular forum favor or disfavor the client's position?
- In which forum is the defending party more likely to respond (or default)?
- If defending, does removal, transfer, or other objection to a particular jurisdiction invoked by the plaintiff benefit the defendant strategically?
- In which forum will any final judgment likely be successfully enforceable or defendable?

If defending or prosecuting as third party counsel, use the above analysis to determine whether and how to bring or defend a third party claim.

Successful litigation strategy, whether as counsel to plaintiff or defendant, starts with analysis of jurisdictional issues. "[W]hen we speak of invoking a court's jurisdiction, we generally mean that (1) the indispensable parties to the controversy have been lawfully brought before the court; (2) the controversy has been brought before the court by an appropriate pleading; and, if the action is in rem, (3) the court has power or control over the res." *State, Dept. of Revenue v. Pelsey*, 779 So.2d 629, 631–632 (Fla. 1st DCA 2001), citing *Lovett v. Lovett*, 96 Fla. 611, 112 So. 768, 776 (1927).

The term "jurisdiction" has sometimes been confused with the concept of venue. *Hobbs v. Don Mealey Chevrolet, Inc.*, 642 So.2d 1149 (Fla. 5th DCA 1994). As defined by Black's Law Dictionary (Thomson/West, 9th ed. 2009), venue is "[t]he proper or a possible place for a lawsuit to proceed, usu[ally] because the place has some connection either with the events that gave rise to the lawsuit or with the plaintiff or defendant." Venue involves a selection of one court if more than one court has jurisdiction and refers to the place where an action is tried. *Ringling Bros.-Barnum & Bailey Combined Shows, Inc. v. State*, 295 So.2d 314 (Fla. 1st DCA 1974).

Traditionally, "jurisdiction" as applied to courts refers to "the power conferred on a court by the sovereign to take cognizance of the subject matter of a litigation and the parties brought before it and to hear and determine the issues and render judgment." *Dyer v. Battle*, 168 So.2d 175, 176 (Fla. 2d DCA 1964). See also *Lovett*; *Malone v. Meres*, 91 Fla. 709, 109 So. 677 (1926); *State, Dept. of Revenue v. Pelsey*, 779 So.2d 629 (Fla. 1st DCA 2001).

Before the jurisdiction of the subject matter of a case can be exercised, however, "it must be lawfully invoked and called into action" by the parties. *Garcia v. Stewart*, 906 So.2d 1117, 1122 (Fla. 4th DCA 2005), quoting *Lovett*, 112 So. at 775–776.

The subject matter jurisdiction of a tribunal is therefore the power of that tribunal to address and determine the legal and factual issues raised by the case before it. (The term "tribunal" is used here because of the modern advent of alternative dispute resolutions venues, such as private arbitration, whether before the American Arbitration Association, the International Center for Dispute Resolution or elsewhere. Many jurisdictions, including Florida, have enacted the Uniform Arbitration Code to grant jurisdictional power and authority to private arbitration tribunals and arbitrators. See *F.S.* 682.01 *et seq.*)

Subject matter jurisdiction "'is not dependent upon the state of facts which may appear in a particular case, or the ultimate existence of a good cause of action in the plaintiff.'" *Malone*, 109 So. at 684, quoting *Hunt v. Hunt*, 72 N.Y. 217 (1878). Payment of a filing fee "is not a condition precedent to the court acquiring jurisdiction." *Payette v. Clark*, 559 So.2d 630, 633 (Fla. 2d DCA 1990).

A judgment of a court acting without subject matter jurisdiction is void. *Bigler v. Dept. of Banking & Finance*, 392 So.2d 249 (Fla. 1981).

However, practitioners should discern between a void judgment and a voidable judgment. Jurisdictional challenges differ depending on whether a judgment is void or voidable: "A void judgment is so defective that it is deemed never to have had legal force and effect. In contrast, a voidable judgment is a judgment that has been entered based upon some error in procedure that allows a party to have the judgment vacated, but the judgment has legal force and effect unless and until it is vacated." *Sterling Factors Corp. v. U.S. Bank National Ass'n*, 968 So.2d 658, 665 (Fla. 2d DCA 2007). On proper motion, trial courts must set aside void judgments. *Johnson v. State, Dept. of Revenue ex rel. Lamontagne*, 973 So.2d 1236 (Fla.1st DCA 2008). When a court is legally organized and has jurisdiction of the subject matter, and the adverse parties are given an opportunity to be heard, then errors, irregularities, or wrongdoing in proceedings, short of illegal deprivation of opportunity to be heard, will not render the judgment void. *Phenion Development Group, Inc. v. Love*, 940 So.2d 1179 (Fla. 5th DCA 2006). See *Krueger v. Ponton*, 6 So.3d 1258 (Fla. 5th DCA 2009).

"[A] tribunal always has jurisdiction to determine its own jurisdiction." *Sun Insurance Co. v. Boyd*, 105 So.2d 574, 575 (Fla. 1958). An erroneous exercise of jurisdiction, and perhaps an erroneous determination of jurisdiction, may be subject to review and reversal on appeal, but is not necessarily subject to collateral attack. *State ex rel. Everette v. Petteway*, 131 Fla. 516, 179 So. 666 (1938).

Furthermore, the manner by which a court acquires jurisdiction over the person of the parties appearing before it is determined by constitutional and legislative provisions. These provisions are designed in part to afford due process for individual parties. Unlike subject matter jurisdiction, however, the strict requirements of the statutes and rules of procedure governing exercise of a court's jurisdiction over the person may be waived under some circumstances. *De Ardila v. Chase Manhattan Mortgage Corp.*, 826 So.2d 419 (Fla. 3d DCA 2002); *Fundaro v. Canadiana Corp.*, 409 So.2d 1099 (Fla. 4th DCA 1982); *Dyer*. Compare *RHPC, Inc. v. Gardner*, 533 So.2d 312 (Fla. 2d DCA 1988).

For example, when the controversy before the court involves specific property and is "in rem" or "quasi in rem," the court is not always required to obtain in personam jurisdiction over the individual, but must have jurisdiction over the property in question. *Ruth v. Dept. of Legal Affairs*, 684 So.2d 181 (Fla. 1996); *Springbrook Commons, Ltd. v. Brown*, 761 So.2d 1192 (Fla. 4th DCA 2000).

II. SUBJECT MATTER JURISDICTION

A. [§1.2] Organic Law

Article V of the Florida Constitution, the judiciary article, vests the judicial power of Florida in "a supreme court, district courts of appeal, circuit courts and county courts" and expressly provides that "[n]o other courts may be established by the state, any political subdivision, or any municipality." Art. V, §1, Fla. Const. The legislature has the prerogative by general law to "divide the state into appellate court districts and judicial circuits following county lines." *Id.* Quasi-judicial power may be granted to certain commissions and administrative officers or bodies "in matters connected with the functions of their offices." *Id.*

B. Florida Trial Courts

1. [§1.3] Circuit Courts

The Florida Constitution provides that

> [t]he circuit courts shall have original jurisdiction not vested in the county courts, and jurisdiction of appeals when provided by general law. They shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction. Jurisdiction of the circuit court shall be uniform throughout the state. They shall have the power of direct review of administrative action prescribed by general law.

Art. V, §5, Fla. Const. Under the constitutional authority granted by Article V, the legislature has set forth by general law the jurisdiction of the circuit courts in *F.S.* 26.012.

2. [§1.4] County Courts

Article V, §6, Fla. Const., sets out the jurisdiction of the county courts, providing that "county courts shall exercise the jurisdiction prescribed by general law" and that "[s]uch jurisdiction shall be uniform throughout the state." The legislature, under the constitutional authority of Article V, has set forth by general law the jurisdiction of the county courts in *F.S.* 34.01.

C. [§1.5] Florida Appellate Courts

Florida Rule of Appellate Procedure 9.030 governs the appellate and original jurisdiction of the district courts of appeal and the Florida Supreme Court.

It should be noted that, to avoid injustice, Florida appellate courts will sometimes act to retain jurisdiction otherwise improperly sought or invoked. *Rule* 9.040(c) provides that when a party seeks an improper remedy, "the cause shall be treated as if the proper remedy had been sought; provided that it shall not be the responsibility of the court to seek the proper remedy." This is "to forestall an impending injury where no other appropriate and adequate legal remedy exists and only when damage is likely to follow," and is "the appropriate remedy to prevent an inferior tribunal from acting in excess of jurisdiction" when there is no right to remedy the wrong at issue by direct appeal. *City of Ocala v. Gard*, 988 So.2d 1281, 1283 (Fla. 5th DCA 2008).

For extensive treatment of appellate jurisdiction, see Chapter 3 of FLORIDA APPELLATE PRACTICE (Fla. Bar CLE 7th ed. 2010). Appellate jurisdiction is, however, part of the subject matter jurisdiction conferred by applicable provisions of the Florida Constitution and general law. Article V, §3(b), sets forth the jurisdiction of the Supreme Court, and Article V, §4(b), sets forth the jurisdiction of the district courts of appeal.

D. [§1.6] Private Arbitration And The Florida Arbitration Code

Generally, Florida courts view arbitration as a preferred mechanism of dispute resolution; any doubt regarding the arbitrability of a claim should be resolved in favor of allowing arbitration. See, *e.g.*, *Nestler-Polletto Realty, Inc. v. Kassin*, 730 So.2d 324 (Fla. 4th DCA 1999). A concise review of this area, from which this discussion is in part derived, may be found in Cavendish, *The Concept of Arbitrability Under the Florida Arbitration Code*, 82 Fla. Bar J. 18 (Nov. 2008). The Florida Supreme Court has opined that under the Florida Arbitration Code "courts [will] indulge every reasonable presumption to uphold proceedings resulting in an award." *Roe v. Amica Mutual Insurance Co.*, 533 So.2d 279, 281 (Fla. 1988). Thus, in Florida as a matter of doctrine, there is "a strong public policy favoring arbitration." *Beverly Hills Development Corp. v. George Wimpey of Florida, Inc.*, 661 So.2d 969, 971 (Fla. 5th DCA 1995). The Florida Arbitration Code, *F.S.* 682.01 *et seq.*, controls arbitration clauses when interstate commerce is not implicated, while federal law, via the Federal Arbitration

Act ("FAA"), controls arbitration clauses when a matter of interstate commerce is involved. *O'Keefe Architects, Inc. v. CED Construction Partners, Ltd.*, 944 So.2d 181 (Fla. 2006); *Wachovia Securities, LLC v. Vogel*, 918 So.2d 1004 (Fla. 2d DCA 2006).

It is not surprising, then, that Florida and federal courts interpreting the Florida Arbitration Code and the FAA have fostered highly similar tests for analyzing the jurisdictional appropriateness of arbitration in a specific matter, termed "arbitrability": that quality which makes a legal claim or right subject to an enforceable agreement to submit it to the authority of private arbitration, instead of the default forum, the public courts of the sovereign federal and state governments. See Muñiz, *Compelling Arbitration of Disputes: The Florida v. Federal Law Quagmire*, 80 Fla. Bar J. 31 (Dec. 2006).

While parties may agree in advance to submit disputes to private arbitration, often the question arises whether a specific issue or dispute between the parties is properly arbitrable. This question arises because the parties cannot agree as to the intent of their arbitration clause, or because the dispute that has arisen was not anticipated by the parties, or because the arbitration clause is contained within an agreement alleged to be fraudulently induced or procured. In those cases, the determination of whether a claim is subject to arbitration under the Federal Arbitration Act is two-fold: Courts are to decide (1) whether the parties agreed in writing to arbitrate their disputes; and (2) whether the claims raised fall within the scope of the arbitration provision. Under the Florida Arbitration Code, the analysis for arbitrability proceeds in three parts: (1) whether a valid written agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitration was waived. See *AT&T Tech., Inc. v. Communications Workers of America*, 475 U.S. 643, 106 S.Ct. 1415, 89 L.Ed.2d 648 (1986); *Seifert v. U.S. Home Corp.*, 750 So. 2d 633 (Fla. 1999); *PaineWebber, Inc. v. Hartmann*, 921 F.2d 507 (3rd Cir. 1990) (courts must engage in limited review solely to determine whether valid arbitration agreement exists and whether dispute falls within scope of arbitration clause).

Florida courts applying the Florida Arbitration Code generally lean toward resolving all doubts in a disagreement over arbitrability in favor of arbitration. See *Waterhouse Construction Group, Inc. v. 5891 SW 64th Street, LLC.*, 949 So.2d 1095 (Fla. 3d DCA 2007); *Gainesville Health Care Center., Inc. v. Weston*, 857 So.2d 278 (Fla. 1st DCA 2003); *Prudential Securities, Inc. v. Katz*, 807 So.2d 173 (Fla. 3d DCA 2002). This has created, with respect to interpretation of arbitration clauses, the rule of