

Virginia: **PORTER V. COMMONWEALTH**, Record Nos. 071928 & 071929, 276 Va. 203; 661 S.E.2d 415; 2008 Va. LEXIS 78 (Va. 2008):

* Jurisdiction is a term which can engender much confusion because it encompasses a variety of separate and distinct legal concepts. We addressed this topic and differentiated the categories of jurisdiction in *Morrison v. Bestler*, 239 Va. 166, 387 S.E.2d 753, 6 Va. Law Rep. 1125 (1990). A court may lack the requisite "jurisdiction" to proceed to an adjudication on the merits for a variety of reasons. The term jurisdiction embraces several concepts including subject matter jurisdiction, which is the authority granted through constitution or statute to adjudicate a class of cases or controversies; territorial jurisdiction, that is, authority over persons, things, or occurrences located in a defined geographic area; notice jurisdiction, or effective notice to a party or if the proceeding is in rem seizure of a res; and "the other conditions of fact must exist which are demanded by the unwritten or statute law as the prerequisites of the authority of the court to proceed to judgment or decree." **FARANT INV. CORP. V. FRANCIS**, 138 Va. 417, 427-28, 122 S.E. 141, 144 (1924).

* While these elements are necessary to enable a court to proceed to a valid judgment, there is a significant difference between subject matter jurisdiction and the other "jurisdictional" elements. Subject matter jurisdiction alone cannot be waived or conferred on the court by agreement of the parties. *Lucas v. Biller*, 204 Va. 309, 313, 130 S.E.2d 582, 585 (1963). A defect in subject matter jurisdiction cannot be cured by reissuance of process, passage of time, or pleading amendment. While a court always has jurisdiction to determine whether it has subject matter jurisdiction, **a judgment on the merits made without subject matter jurisdiction is null and void**. *Barnes v. American Fert. Co.*, 144 Va. 692, 705, 130 S.E. 902, 906 (1925). Likewise, any subsequent proceeding based on such a defective judgment is void or a nullity. *Ferry Co. v. Commonwealth*, 196 Va. 428, 432, 83 S.E.2d 782, 784 (1954). Even more significant, the lack of subject matter jurisdiction can be raised at any time in the proceedings, even for the first time on appeal by the court sua sponte. **THACKER V. HUBARD**, 122 Va. 379, 386, 94 S.E. 929, 930 (1918).

* In contrast, defects in the other jurisdictional elements generally will be considered waived unless raised in the pleadings filed with the trial court and properly preserved on appeal. Rule 5:25.

* One consequence of the non-waivable nature of the requirement of subject matter jurisdiction is that attempts are sometimes made to mischaracterize other serious procedural errors as defects in subject matter jurisdiction to gain an opportunity for review of matters not otherwise preserved. See **RESTATEMENT (SECOND) OF JUDGMENTS**, § 11 (1980).Id. at 169-70, 387 S.E.2d at 755-56.

* Our recitation in *Morrison* reflects the long-standing distinction between subject matter jurisdiction, which cannot be granted or waived by the parties and the lack of which renders

an act of the court void, and territorial jurisdiction or venue. The latter goes to the authority of the court to act in particular circumstances or places and is waived if not properly and timely raised. The judgment of a court which is defective in territorial jurisdiction or venue is thus only voidable and not void. Id.; **SOUTHERN SAND AND GRAVEL COMPANY, INC. V. MASSAPONAX SAND AND GRAVEL CORPORATION**, 145 Va. 317, 326, 133 S.E. 812, 814 (1926).