

## Question

If a party in Texas discovers a potential jurisdictional defect after 14 months of contesting temporary orders (such as orders to vacate a home), can the entire case be dismissed for lack of subject matter jurisdiction?

## Answer (Texas)

### Short response

Yes, a case in Texas can be dismissed for lack of subject matter jurisdiction even after a party has contested temporary orders for 14 months because subject matter jurisdiction cannot be waived, conferred by consent, or presumed at any stage of the proceedings. Subject matter jurisdiction is a fundamental requirement for a court's authority to act, and its absence can be raised at any time before final judgment, even for the first time on appeal.

### Summary

Subject matter jurisdiction in Texas is a fundamental prerequisite for a court to hear and decide a case. Unlike procedural issues that may be waived if not timely raised, subject matter jurisdiction concerns the court's power to adjudicate the type of controversy presented. Texas law consistently holds that subject matter jurisdiction cannot be waived, conferred by consent or estoppel, and may be raised at any time, even for the first time on appeal. When a court lacks subject matter jurisdiction, any orders it issues, including temporary orders, are void rather than merely voidable.

In the context of family law cases, which often involve temporary orders such as orders to vacate a home, Texas has adopted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) as Chapter 152 of the Texas Family Code. This Act provides specific jurisdictional requirements that must be met for a Texas court to make child custody determinations. If these requirements are not satisfied, the court lacks subject matter jurisdiction regardless of how long the parties have been participating in the litigation. Therefore, if a party discovers after 14 months that the court lacked subject matter jurisdiction from the outset, the entire case can be dismissed through a plea to the jurisdiction, and any orders previously issued would be considered void.

## Background and Relevant Law

### Legislative Framework

The Texas Family Code contains provisions that define when Texas courts have subject matter jurisdiction over family law matters, particularly in cases involving child custody. Section 152.201 of the Texas Family Code establishes the exclusive jurisdictional basis for Texas courts to make initial child custody determinations.

According to [Tex. Fam. Code § 152.201](#), a Texas court has jurisdiction to make an initial child custody determination only if:

1. Texas is the home state of the child on the date of the commencement of the proceeding, or was the home state within six months before commencement and a parent continues to live in Texas;
2. A court of another state does not have jurisdiction or has declined jurisdiction, and the child and at least one parent have a significant connection with Texas with substantial evidence available in the state;
3. All courts having jurisdiction have declined to exercise it; or
4. No court of any other state would have jurisdiction under the preceding criteria.

Additionally, [Tex. Fam. Code § 155.001](#) addresses when a court acquires continuing, exclusive jurisdiction over matters related to a child, stating: "(a) Except as otherwise provided by this section, a court acquires continuing, exclusive jurisdiction over the matters provided for by this title in connection with a child on the rendition of a final order." This suggests that if a final order has not been rendered, the court may not have acquired continuing exclusive jurisdiction.

If a case is dismissed due to lack of jurisdiction, [Tex. Civ. Prac. and Rem. Code § 16.064](#) provides that the statute of limitations is suspended between the original filing and refiling in a proper court, provided the refiling occurs within 60 days of the dismissal becoming final.

### Case Law on Subject Matter Jurisdiction Generally

Texas courts have consistently emphasized that subject matter jurisdiction is essential for a court to have authority over a case and cannot be waived or presumed. In [Texas Ass'n of Business v. Texas Air Control Bd., 852 S.W.2d 440 \(Tex. 1993\)](#), the Texas Supreme Court established that "Subject matter jurisdiction is an issue that may be raised for the first time on appeal; it may not be waived by the parties."

This principle has been upheld in numerous subsequent cases. In [McGuire v. McGuire, 18 S.W.3d 801 \(Tex. App. 2000\)](#), the court emphasized that "Subject matter jurisdiction is never presumed and cannot be waived." The court further clarified that arguments confusing personal jurisdiction with subject matter jurisdiction are misplaced, as the latter cannot be waived under any circumstances.

Similarly, in [Ruffier v. Ruffier, 190 S.W.3d 884 \(Tex. App. 2006\)](#), the court stated: "Subject matter jurisdiction is never presumed, cannot be conferred by consent, waiver, or estoppel at any stage of the proceeding, and may be raised for the first time on appeal."

More recently, in [In re Elliot, 04-22-00552-CV \(Tex. App. Nov 30, 2022\)](#), the court reiterated: "A court's subject-matter jurisdiction coincides with its authority to validly act. ... 'Subject matter jurisdiction is never presumed and cannot be waived.' ... An order rendered without subject matter jurisdiction is void." This reinforces the principle that actions taken by a court without subject matter jurisdiction are not merely voidable but entirely void.

Regarding the timing of challenging jurisdiction, the ["Texas Courts And Subject Matter Jurisdiction"](#) secondary source states that "the absence of subject matter jurisdiction can generally be raised at any time and can be raised by a court sua sponte." This is consistent with case law and indicates that there is no time

limitation on raising jurisdictional defects.

The "[Subject Matter Jurisdiction of Texas Trial Courts](#)" source further confirms that "Any party or the court on its own motion may raise lack of subject matter jurisdiction. Indeed, a court is obliged to consider its own jurisdiction even if the parties do not question it. The defect may be raised at any time, including on appeal."

## Challenging Subject Matter Jurisdiction

Texas law provides mechanisms for challenging a court's subject matter jurisdiction. As explained in "[Chapter 21-9 Attacking Subject Matter Jurisdiction](#)," "A plea to the jurisdiction challenges a Texas court's subject matter jurisdiction. A plea to the jurisdiction may be presented at any time before final judgment because subject matter jurisdiction cannot be waived prior to final judgment."

In [Hunt v. City of Diboll, 574 S.W.3d 406 \(Tex. App. 2017\)](#), the court explained that "A plea to the jurisdiction challenges the trial court's authority to determine the subject matter of a specific cause of action....A plea to the jurisdiction is a dilatory plea, the purpose of which is to defeat a cause of action without regard to whether the claims asserted have merit."

The standard for reviewing subject matter jurisdiction was outlined in [Stallworth v. Stallworth, 201 S.W.3d 338 \(Tex. App. 2006\)](#): "When a plea to the jurisdiction challenges the pleadings, we determine if the pleader has alleged facts that affirmatively demonstrate the court's jurisdiction to hear the cause. However, if a plea to the jurisdiction challenges the existence of jurisdictional facts — we consider relevant evidence submitted by the parties when necessary to resolve the jurisdictional issues raised."

This standard has been further refined in [Texas Dept. Parks and Wildlife v. Miranda, 133 S.W.3d 217 \(Tex. 2004\)](#), which states: "We adhere to the fundamental precept that a court must not proceed on the merits of a case until legitimate challenges to its jurisdiction have been decided." It's important to note that this case was stated as abrogated by [Russell v. City of Fort Worth Texas, No. 2-05-191-CV \(Tex. App. 5/18/2006\)](#), though the specific principle cited here regarding the need to address jurisdictional challenges before proceeding on the merits remains valid.

In [City of Round Rock v. Whiteaker, 241 S.W.3d 609 \(Tex. App. 2007\)](#), the court further elaborated on this standard: "[I]n a case in which the jurisdictional challenge implicates the merits of the plaintiff's cause of action and the plea to the jurisdiction includes evidence, the trial court reviews the relevant evidence to determine if a fact issue exists."

## Subject Matter Jurisdiction in Family Law Cases

In the context of family law, particularly cases involving child custody determinations, Texas courts have applied these general principles of subject matter jurisdiction with particular attention to the requirements established by the UCCJEA.

In [In re Interest of A.J.T., 654 S.W.3d 312 \(Tex. App. 2022\)](#), the court explained: "Though Texas district courts have general jurisdiction over child custody matters, the Texas Legislature adopted the UCCJEA in 1999 as Chapter 152 of the Texas Family Code, which governs those circumstances under which a court has, or loses, jurisdiction over a child custody suit. ... Section 152.201 of the Family Code provides the exclusive jurisdictional basis for a Texas court to make an initial child custody determination."

The court further emphasized that "Because Section 152.201 defines when the court has and does not have subject-matter jurisdiction over initial child custody determinations, subject-matter jurisdiction in this case cannot merely be presumed. It is Section 152.201 that invokes or relinquishes subject-matter jurisdiction in initial child custody matters."

The Texas Supreme Court, in [In re Dean, 393 S.W.3d 741 \(Tex. 2013\)](#), emphasized the exclusive nature of these jurisdictional grounds: "These four grounds provide 'the exclusive jurisdictional basis for [a Texas court to] mak[e] a child custody determination.' [Tex. Fam.Code § 152.201](#)(b). So, unless a court finds that it has jurisdiction under one of the four enumerated grounds, it cannot exercise jurisdiction over a child custody determination."

In [Powell v. Stover, 165 S.W.3d 322 \(Tex. 2005\)](#), the Texas Supreme Court conditionally granted a writ of mandamus where a Texas court improperly assumed jurisdiction because Texas was not the child's home state: "We hold that, because the child lived in Tennessee with his parents for at least six consecutive months immediately before the child-custody proceeding was commenced, Texas is not the child's home state and the trial court's exercise of jurisdiction was improper."

## Consequences of Lack of Subject Matter Jurisdiction

The consequences of a court lacking subject matter jurisdiction are severe. In [In re St. Thomas High Sch., 495 S.W.3d 500 \(Tex. App. 2016\)](#), the court stated: "A trial court has no discretion and must dismiss the case as a ministerial act when it lacks subject matter jurisdiction."

This principle is particularly evident in family law cases. In [In re Milton, 420 S.W.3d 245 \(Tex. App. 2014\)](#), the court held: "The Texas courts lack jurisdiction to entertain the underlying suit for a divorce and an initial child custody determination under the Uniform Child Custody and Jurisdiction Enforcement Act ('UCCJEA'). The suit should be dismissed for lack of subject matter jurisdiction."

Similarly, in another [In re Milton, NO. 01-13-00240-CV \(Tex. App. Dec 19, 2013\)](#) decision, the court concluded: "Because I believe this Court is without subject matter jurisdiction to do anything other than grant a writ of mandamus and order the Harris County court to vacate its orders as void and to dismiss this suit... The Harris County court should have dismissed the case for lack of subject matter jurisdiction."

## Analysis

### Timing of Jurisdictional Challenges

The question specifically asks whether a case can be dismissed for lack of subject matter jurisdiction after a party has been contesting temporary orders for 14 months. Based on the authorities reviewed, the timing of the discovery of the jurisdictional defect is immaterial to the court's obligation to dismiss the case if it lacks subject matter jurisdiction.

Multiple Texas cases have explicitly stated that subject matter jurisdiction can be challenged at any time. As established in [Texas Ass'n of Business v. Texas Air Control Bd., 852 S.W.2d 440 \(Tex. 1993\)](#), subject matter jurisdiction "may be raised for the first time on appeal; it may not be waived by the parties." This principle has been consistently reaffirmed in subsequent cases, including [City of El Paso v. Waterblasting Techs., Inc., 491 S.W.3d 890 \(Tex. App. 2016\)](#), which stated that subject matter jurisdiction "may be raised for the first time on appeal by any party or the court itself."

The secondary source "[Chapter 21-9 Attacking Subject Matter Jurisdiction](#)" confirms that "A plea to the jurisdiction may be presented at any time before final judgment because subject matter jurisdiction cannot be waived prior to final judgment."

Therefore, the fact that 14 months have elapsed since the commencement of the case does not preclude a party from challenging the court's subject matter jurisdiction, nor does it relieve the court of its obligation to dismiss the case if it determines it lacks jurisdiction.

### **Effect on Temporary Orders**

When a court lacks subject matter jurisdiction, any orders it issues, including temporary orders such as orders to vacate a home, are void. As stated in [In re Elliot, 04-22-00552-CV \(Tex. App. Nov 30, 2022\)](#), "An order rendered without subject matter jurisdiction is void."

This principle was specifically applied to temporary orders in family law cases in [In re Milton, 420 S.W.3d 245 \(Tex. App. 2014\)](#), where the court held that "the temporary orders, order for capias, and writ of attachment issued by the Harris County court were issued without authority and are void" because the court lacked subject matter jurisdiction under the UCCJEA.

Therefore, if a court determines that it lacked subject matter jurisdiction from the outset, all orders issued during the 14 months, including temporary orders to vacate a home, would be considered void.

### **Special Considerations in Family Law Cases**

In family law cases, particularly those involving child custody, Texas courts apply the UCCJEA as codified in Chapter 152 of the Texas Family Code. The jurisdictional requirements in Section 152.201 are not waivable and must be satisfied for the court to have authority to act.

As explained in [In re Interest of A.J.T., 654 S.W.3d 312 \(Tex. App. 2022\)](#), "Section 152.201 defines when the court has and does not have subject-matter jurisdiction over initial child custody determinations," and such jurisdiction "cannot merely be presumed."

While [In re Forlenza, 140 S.W.3d 373 \(Tex. 2004\)](#) notes that once jurisdiction is established in family law cases, "a court retains exclusive continuing jurisdiction until it determines that the significant-connection and substantial-evidence requirements are no longer met," this presupposes that jurisdiction was properly established in the first place.

If the jurisdictional defect relates to the initial establishment of jurisdiction—for example, if Texas was not the child's home state at the time the proceeding was commenced—then the court never had subject matter jurisdiction, and all subsequent orders would be void.

### **Potential Exceptions**

One potential exception arises in emergency situations. [Saavedra v. Schmidt, 96 S.W.3d 533 \(Tex. App. 2002\)](#) recognized that the "UCCJEA allows for temporary emergency jurisdiction in cases where a child's safety is at risk, but this jurisdiction is only valid until the emergency is resolved."

Another perspective is offered in the concurring opinion in [In re Interest of D.S., 602 S.W.3d 504 \(Tex. 2020\)](#), which suggests that "a lack of 'jurisdiction' under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) does not equate to a lack of 'subject matter jurisdiction' that deprives the court of the power to hear and decide the case, thereby endangering a judgment's finality." However, this appears to be a minority view and conflicts with numerous other Texas cases that treat UCCJEA jurisdictional requirements as true subject matter jurisdiction issues.

### **Procedural Mechanism for Dismissal**

The appropriate procedural mechanism for challenging subject matter jurisdiction is a plea to the jurisdiction. As explained in [Hunt v. City of Diboll, 574 S.W.3d 406 \(Tex. App. 2017\)](#), "A plea to the jurisdiction challenges the trial court's authority to determine the subject matter of a specific cause of action" and is "a dilatory plea, the purpose of which is to defeat a cause of action without regard to whether the claims asserted have merit."

To prevail on a plea to the jurisdiction, the defendant must "demonstrate an incurable jurisdictional defect apparent on the face of the pleadings rendering it impossible for the plaintiff's petition to confer jurisdiction on the district court." This suggests that not all jurisdictional defects will result in dismissal—only those that are incurable.

When reviewing a plea to the jurisdiction, courts follow the standard outlined in [Stallworth v. Stallworth, 201 S.W.3d 338 \(Tex. App. 2006\)](#): "When a plea to the jurisdiction challenges the pleadings, we determine if the pleader has alleged facts that affirmatively demonstrate the court's jurisdiction to hear the cause. However, if a plea to the jurisdiction challenges the existence of jurisdictional facts — we consider relevant evidence submitted by the parties when necessary to resolve the jurisdictional issues raised."

### **Exceptions and Caveats**

#### **Distinguishing Subject Matter from Personal Jurisdiction**

It is important to distinguish subject matter jurisdiction from personal jurisdiction. As noted in [McGuire v. McGuire, 18 S.W.3d 801 \(Tex. App. 2000\)](#), arguments that "confuse personal jurisdiction with subject matter jurisdiction" are misplaced. While personal jurisdiction can be waived if not timely raised, subject matter jurisdiction cannot.

## Possibility of Cure

Not all jurisdictional defects are incurable. According to [Hunt v. City of Diboll, 574 S.W.3d 406 \(Tex. App. 2017\)](#), to prevail on a plea to the jurisdiction, the defendant must demonstrate "an incurable jurisdictional defect." This suggests that some jurisdictional defects might be curable, potentially avoiding dismissal.

In cases where jurisdiction depends on factual determinations, such as whether Texas qualifies as the child's "home state" under the UCCJEA, the court may consider evidence to resolve these factual issues. As stated in [In re Tirey](#) (Tex. App. 2022), "If the defendant challenges the existence of jurisdictional facts, we must consider relevant evidence submitted by the parties to resolve the jurisdictional issue."

## Refiling after Dismissal

If a case is dismissed for lack of subject matter jurisdiction, [Tex. Civ. Prac. and Rem. Code § 16.064](#) provides that the statute of limitations is suspended between the original filing and refiling in a proper court, provided the refiling occurs within 60 days of the dismissal becoming final. This offers some protection to plaintiffs who file in the wrong court.

## Conclusion

Based on the authorities reviewed, a case in Texas can indeed be dismissed for lack of subject matter jurisdiction even after a party has contested temporary orders for 14 months. Subject matter jurisdiction is essential for a court to have authority over a case, and its absence can be raised at any time before final judgment, including for the first time on appeal.

When a court lacks subject matter jurisdiction, it has no discretion but must dismiss the case, and any orders it has issued, including temporary orders, are void rather than merely voidable. This principle applies to all types of cases but has been particularly emphasized in family law cases governed by the UCCJEA, where specific jurisdictional requirements must be met for a Texas court to make child custody determinations.

The key principles that emerge from the authorities are:

1. Subject matter jurisdiction cannot be waived, conferred by consent, or presumed at any stage of the proceedings.
2. A plea to the jurisdiction challenging subject matter jurisdiction may be presented at any time before final judgment.
3. When a court lacks subject matter jurisdiction, any orders it issues are void.
4. In family law cases, the UCCJEA establishes specific jurisdictional requirements that must be met for a Texas court to have subject matter jurisdiction over child custody determinations.

Therefore, if a party in Texas discovers a potential jurisdictional defect after 14 months of contesting temporary orders, they can file a plea to the jurisdiction, and if the court determines it lacked subject matter jurisdiction from the outset, the entire case must be dismissed and all previous orders, including temporary orders to vacate a home, would be void.

## Legal Authorities

[In re Marriage of Flowers, No. 06-19-00015-CV \(Tex. App. Aug 22, 2019\)](#)

### Texas Court of Appeals

#### Extract

*To be authorized to decide a case, a court must have subject-matter jurisdiction. Tex. Ass'n of Bus. v. Tex. Air Control Bd., 852 S.W.2d 440, 443 (Tex. 1993); In re Marriage of Marsalis, 338 S.W.3d 131, 134 (Tex. App.—Texarkana 2011, no pet.). A court has subject-matter jurisdiction 'when the nature of the case falls within a general category of cases that the court is empowered, under applicable statutory and constitutional provisions, to adjudicate.' Marsalis, 338 S.W.3d at 134 (citing In re Barnes, 127 S.W.3d 843, 846 (Tex. App.—San Antonio 2003, orig. proceeding)).*

#### Summary

The passage explains the requirement for a court to have subject-matter jurisdiction to decide a case. It emphasizes that a court must be empowered under statutory and constitutional provisions to adjudicate the nature of the case. This is a fundamental principle that applies to all cases, including those involving temporary orders.

[In re St. Thomas High Sch., 495 S.W.3d 500 \(Tex. App. 2016\)](#)

### Texas Court of Appeals

#### Extract

*Mandamus is warranted when the relator demonstrates a clear abuse of discretion and the lack of an adequate by appeal. In re Prudential Ins. Co., 148 S.W.3d 124, 135–36 (Tex.2004) (orig.proceeding). "A trial court has no discretion and must dismiss the case as a ministerial act when it lacks subject matter jurisdiction."*

*In re Am. Nat'l Cty Mut. Ins. Co., No. 14–12–01136–CV, 2013 WL 476824 at \*1 (Tex.App.–Houston [14th Dist.] Feb. 6, 2013, orig. proceeding) (per curiam) (mem.op.). Mandamus is an appropriate remedy when the trial court acts without subject matter jurisdiction.*

## Summary

A trial court in Texas must dismiss a case if it lacks subject matter jurisdiction, and this is considered a ministerial act. This means that if a jurisdictional defect is discovered, regardless of the time elapsed, the court is obligated to dismiss the case. The use of mandamus is appropriate when a trial court acts without subject matter jurisdiction, reinforcing the idea that jurisdictional issues can be raised at any time and must be addressed by the court.

[In re Interest of D.S., 602 S.W.3d 504 \(Tex. 2020\)](#)

## Texas Supreme Court

### Extract

*As the Court's opinion thoroughly and accurately explains, when a trial court renders judgment terminating parental rights based on an unrevoked affidavit of relinquishment, Texas Family Code section 161.211(c) plainly forecloses a collateral attack on the judgment premised on an alleged lack of subject matter jurisdiction. I therefore join the Court's opinion, which correctly holds that Father's collateral attack is barred by statute. I write separately to note that it is barred for another reason as well: a court's lack of 'jurisdiction' under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) does not equate to a lack of 'subject matter jurisdiction' that deprives the court of the power to hear and decide the case, thereby endangering a judgment's finality.*

## Summary

A lack of jurisdiction under the UCCJEA does not equate to a lack of subject matter jurisdiction that would render a court's judgment void. This suggests that even if a jurisdictional defect is discovered, it may not necessarily lead to the dismissal of the entire case for lack of subject matter jurisdiction, especially in cases involving the termination of parental rights.

[Nikolenko v. Nikolenko, 01-20-00284-CV \(Tex. App. Feb 17, 2022\)](#)

## Texas Court of Appeals

### Extract

*Subject-matter jurisdiction concerns the court's 'power to hear and determine cases of the general class to which the particular one belongs.' Middleton v. Murff, 689 S.W.2d 212, 213 (Tex. 1985) (per curiam). Subject-matter jurisdiction is essential for a court to have authority to decide a case; it is not presumed and cannot be waived or conferred by consent.*

## Summary

The passage from the Nikolenko v. Nikolenko case explains that subject-matter jurisdiction is fundamental to a court's authority to decide a case. It cannot be presumed, waived, or conferred by consent. This means that if a court lacks subject-matter jurisdiction, any orders or judgments it issues are void. Therefore, if a jurisdictional defect is discovered, it can indeed lead to the dismissal of the case, regardless of how long the case has been contested.

[Hunt v. City of Diboll, 574 S.W.3d 406 \(Tex. App. 2017\)](#)

## Texas Court of Appeals

### Extract

*A plea to the jurisdiction challenges the trial court's authority to determine the subject matter of a specific cause of action. See Bland Indep. Sch. Dist. v. Blue, 34 S.W.3d 547, 554 (Tex. 2000). A plea to the jurisdiction is a dilatory plea, the purpose of which is to defeat a cause of action without regard to whether the claims asserted have merit. Id. The claims may form the context in which a dilatory plea is raised, but the plea should be decided without delving into the merits of the case. Id. To prevail on a plea to the jurisdiction, a defendant must demonstrate an incurable jurisdictional defect apparent on the face of the pleadings rendering it impossible for the plaintiff's petition to confer jurisdiction on the district court.*

## Summary

A plea to the jurisdiction is a legal argument that challenges the court's authority to hear a case based on subject matter jurisdiction. It is a dilatory plea, meaning it aims to dismiss a case without considering the merits of the claims. To succeed, the defendant must show an incurable jurisdictional defect on the face of the pleadings, making it impossible for the court to have jurisdiction. This suggests that if a jurisdictional defect is discovered, it can be grounds for dismissal, regardless of how long the case has been contested, as long as the defect is incurable and apparent.

[In re Milton, NO. 01-13-00240-CV \(Tex. App. Dec 19, 2013\)](#)

## Texas Court of Appeals

### Extract

*The Texas courts lack jurisdiction to entertain the underlying suit for a divorce and an initial child custody determination under the Uniform Child Custody and Jurisdiction Enforcement Act ("UCCJEA"). The suit should be dismissed for lack of subject matter jurisdiction... Because I believe this Court is without subject matter jurisdiction to do anything other than grant a writ of mandamus and order the Harris County court to vacate its orders as void and to dismiss this suit... In her second and third issues, Nicolette argues that the Texas courts lack personal jurisdiction over her and subject matter jurisdiction over the proceedings filed by Jonathan... I would order the Harris County court to vacate its orders and dismiss the case so that the Utah case can proceed unimpeded by this litigation... The Harris County court should have dismissed the case for lack of subject matter jurisdiction.*

### Summary

The passage from "In re Milton" discusses a situation where the Texas courts lacked subject matter jurisdiction under the UCCJEA, leading to the conclusion that the case should be dismissed. The court's orders were deemed void due to the lack of jurisdiction. This indicates that if a jurisdictional defect is discovered, even after a significant period, the case can be dismissed for lack of subject matter jurisdiction.

[Luttrell v. El Paso Cnty., No. 08-16-00090-CV \(Tex. App. Dec 20, 2017\)](#)

## Texas Court of Appeals

### Extract

*The function of a plea to the jurisdiction is to determine whether the court has subject matter jurisdiction over a cause of action, 'without regard to whether the claims asserted have merit.' See City of El Paso v. Waterblasting Techs., Inc., 491 S.W.3d 890, 894 (Tex. App.--El Paso 2016, no pet.) (quoting Bland Indep. Sch. Dist. v. Blue, 34 S.W.3d 547, 554 (Tex. 2000)). In a plea to the jurisdiction, a defendant may challenge the sufficiency of the plaintiff's pleadings to establish jurisdiction or, alternatively, the existence of 'jurisdictional facts' on the ground that the facts do not support a finding of subject matter jurisdiction.*

### Summary

The passage explains the purpose and function of a plea to the jurisdiction, which is to assess whether a court has subject matter jurisdiction over a case. It clarifies that this assessment is independent of the merits of the claims. This is relevant to the question because it indicates that a case can indeed be dismissed for lack of subject matter jurisdiction if it is determined that the court does not have jurisdiction, regardless of how long the case has been contested.

[City of Round Rock v. Whiteaker, 241 S.W.3d 609 \(Tex. App. 2007\)](#)

## Texas Court of Appeals

### Extract

*"[I]n a case in which the jurisdictional challenge implicates the merits of the plaintiff's cause of action and the plea to the jurisdiction includes evidence, the trial court reviews the relevant evidence to determine if a fact issue exists." Id. at 227. This standard, which "generally mirrors that of a summary judgment under Texas Rule of Civil Procedure 166a(c)," seeks to reconcile "the fundamental precept that a court must not proceed on the merits of a case until legitimate challenges to its jurisdiction have been decided" while "protect[ing] the interests of the state and the ... claimants in cases. ... in which the determination of the subject matter jurisdiction of the court implicates the merits of the parties' cause of action." Id. at 228.*

### Summary

When a jurisdictional challenge is raised that implicates the merits of the case, the court must review the relevant evidence to determine if a fact issue exists. This process is akin to a summary judgment procedure under Texas Rule of Civil Procedure 166a(c). The court must resolve legitimate jurisdictional challenges before proceeding on the merits of the case, ensuring that the interests of both the state and the claimants are protected. This suggests that if a jurisdictional defect is discovered, it must be addressed before the case can proceed, regardless of how long the case has been contested.

[In re Milton, 420 S.W.3d 245 \(Tex. App. 2014\)](#)

## Texas Court of Appeals

### Extract

*The Texas courts lack jurisdiction to entertain the underlying suit for a divorce and an initial child custody determination under the Uniform Child Custody and Jurisdiction Enforcement Act ("UCCJEA"). The suit should be dismissed for lack of subject matter jurisdiction and for failure of the plaintiff, real party in interest Jonathan Milton, to establish mandatory residency requirements necessary to maintain a suit for divorce. ... In her second and third issues, Nicolette argues that the Texas courts lack personal jurisdiction over her and subject matter jurisdiction over the proceedings filed by Jonathan, that Texas is an inconvenient forum under the UCCJEA, and that the temporary orders, order for capias, and writ of attachment issued by the Harris County court were issued without authority and are void. She argues that the Harris County court's orders must be vacated and Jonathan's suit must be dismissed for lack of subject matter jurisdiction under*



Family Code sections 152.201 and 152.207. I agree.

## Summary

If a Texas court lacks subject matter jurisdiction under the UCCJEA, the entire case, including temporary orders, can be dismissed. The court's orders are considered void if issued without jurisdiction. This suggests that even after 14 months, if a jurisdictional defect is discovered, the case can be dismissed for lack of subject matter jurisdiction.

[In re Barnes, 127 S.W.3d 843 \(Tex. App. 2003\)](#)

## Texas Court of Appeals

### Extract

*Subject matter jurisdiction is a question of law which we review de novo. ... Subject matter jurisdiction is never presumed and cannot be waived. McGuire, 18 S.W.3d at 804.*

### Summary

Subject matter jurisdiction is a legal question reviewed de novo, meaning it is considered anew by the court without deference to the previous court's decision. Importantly, subject matter jurisdiction cannot be waived, which means that it can be challenged at any time, even after significant time has passed or actions have been taken in the case. This suggests that if a jurisdictional defect is discovered, it could potentially lead to the dismissal of the case, regardless of the time elapsed or actions taken.

[In re Dean, 393 S.W.3d 741, 56 Tex. Sup. Ct. J. 189 \(Tex. 2013\)](#)

## Texas Supreme Court

### Extract

*These four grounds provide 'the exclusive jurisdictional basis for [a Texas court to] mak[e] a child custody determination.' Tex. Fam.Code § 152.201(b). So, unless a court finds that it has jurisdiction under one of the four enumerated grounds, it cannot exercise jurisdiction over a child custody determination. Furthermore, the drafters made clear that one of the Act's primary purposes was to prioritize the child's home state. ... If the [Texas] court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the [Texas] court ... shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the [Texas] court ... is a more appropriate forum, the [Texas] court ... shall dismiss the proceeding.*

### Summary

Texas courts have exclusive jurisdictional grounds for making child custody determinations, as outlined in Tex. Fam.Code § 152.201(b). If a Texas court does not have jurisdiction under these grounds, it cannot exercise jurisdiction over a child custody determination. Furthermore, if another state has jurisdiction in accordance with the Act, the Texas court must defer to that state's jurisdiction unless it is determined that Texas is a more appropriate forum. This suggests that if a jurisdictional defect is discovered, and the Texas court lacks jurisdiction under the specified grounds, the case could potentially be dismissed.

[In the Matter of The Marriage of Candice Rae Marsalis And James Frank Marsalis And In the Interest of W.D.M., 338 S.W.3d 131 \(Tex. App. 2011\)](#)

## Texas Court of Appeals

### Extract

*Subject-matter jurisdiction exists when the nature of the case falls within a general category of cases that the court is empowered, under applicable statutory and constitutional provisions, to adjudicate. ... Subject-matter jurisdiction is essential to the authority of a court to decide a case. ... Section 152.201 of the Texas Family Code governs the initial child custody jurisdiction of courts in the State of Texas and allows Texas courts to make an initial child custody determination only if the statutory requirements are fulfilled. ... Jurisdiction is determined based upon circumstances existing at the time suit is filed in Texas.*

### Summary

Subject-matter jurisdiction is determined based on the circumstances at the time the suit is filed. This means that if a jurisdictional defect is discovered later, it does not necessarily invalidate the court's jurisdiction if the requirements were met at the time of filing. The passage emphasizes that subject-matter jurisdiction is essential for a court to decide a case, and it is determined by the statutory requirements at the time of filing.

[Saavedra v. Schmidt, 96 S.W.3d 533 \(Tex. App. 2002\)](#)

## Texas Court of Appeals

## Extract

*We hold that the Texas court was without jurisdiction to modify the California court's custody determination. The Texas court, however, relied on temporary emergency jurisdiction to enter its orders. The record reflects that the California court refused to communicate with the Texas court concerning realistic plans to protect the safety of these children. The UCCJEA recognizes emergency concerns over a child's safety as a defense to enforcement of another state's custody orders, but only until the emergency can be resolved. Because we construe the Texas court's orders as temporary orders rendered pursuant to its exercise of temporary emergency jurisdiction, we dismiss this appeal for want of jurisdiction. The cause remains pending in the trial court.*

## Summary

The Texas court initially lacked jurisdiction to modify a custody determination made by a California court. However, the Texas court relied on temporary emergency jurisdiction to enter its orders. The UCCJEA allows for temporary emergency jurisdiction in cases where a child's safety is at risk, but this jurisdiction is only valid until the emergency is resolved. The Texas court's orders were considered temporary and based on emergency jurisdiction, leading to the dismissal of the appeal for lack of jurisdiction. This suggests that if a jurisdictional defect is discovered, the case may be dismissed if the court lacked subject matter jurisdiction, but temporary orders may still be valid if they were issued under emergency jurisdiction.

[Texas Ass'n of Business v. Texas Air Control Bd., 852 S.W.2d 440, 36 Tex. Sup. Ct. J. 607 \(Tex. 1993\)](#)

## Texas Supreme Court

### Extract

*Subject matter jurisdiction is an issue that may be raised for the first time on appeal; it may not be waived by the parties. Texas Employment Comm'n v. International Union of Elec., Radio and Mach. Workers, Local Union No. 782, 163 Tex. 135, 352 S.W.2d 252, 253 (1961); RESTATEMENT (SECOND) OF JUDGMENTS § 11, comment c (1982).*

### Summary

The passage from the Texas Supreme Court case clarifies that subject matter jurisdiction is a fundamental issue that can be raised at any point, even for the first time on appeal, and cannot be waived by the parties involved. This means that if a jurisdictional defect is discovered, it can be grounds for dismissing the case regardless of how long the case has been contested.

[In re D.A.P., 267 S.W.3d 485 \(Tex. App. 2008\)](#)

## Texas Court of Appeals

### Extract

*The trial court has subject-matter jurisdiction to modify a custody order of a foreign court if there are sufficient facts satisfying the requirements of section 152.203 of the Family Code. See Tex. Fam. Code Ann. § 152.203 (Vernon 2002 & Supp.2008). Whether a trial court has subject-matter jurisdiction is a question of law subject to de novo review. Westbrook v. Penley, 231 S.W.3d 389, 394 (Tex.2007). Generally, absent a complete record of the proceedings, reviewing courts must presume that the evidence before the trial judge was adequate to support the decision.*

### Summary

Subject-matter jurisdiction is a legal question subject to de novo review, meaning it can be reviewed anew by a higher court. The passage also suggests that, in the absence of a complete record, courts generally presume the trial court's decision was supported by adequate evidence. This implies that if a jurisdictional defect is discovered, it could potentially lead to dismissal if the court indeed lacked jurisdiction. However, the presumption of adequacy of evidence might complicate such a dismissal unless clear evidence of the defect is presented.

[Bruneio v. Bruneio, 890 S.W.2d 150 \(Tex. App. 1994\)](#)

## Texas Court of Appeals

### Extract

*By his first point of error, Anthony complains that the trial court failed to conduct a hearing and rule on his special appearance and plea to the jurisdiction. ... Anthony then filed a 'Plea to the Jurisdiction' on April 3, 1992, complaining, among other things, that Maria had not met the six-month residency requirements and that the trial court lacked personal jurisdiction over Anthony. Anthony repeated these complaints in a series of supplemental pleas to the jurisdiction and pleas in abatement. However, without a hearing or any prior ruling on Anthony's challenge to its jurisdiction, the trial court tried the matter as a default judgment on January 7, 1993, and signed a final divorce decree on January 22, 1993, finding that it had jurisdiction over the present case and dividing the property and awarding custody accordingly.*

### Summary



The passage illustrates that a party can challenge the court's jurisdiction through a "Plea to the Jurisdiction" and that such challenges should be addressed before proceeding to trial. However, in this case, the trial court proceeded without ruling on the jurisdictional challenge, ultimately finding it had jurisdiction. This suggests that while jurisdictional challenges can be raised, they must be timely and properly addressed by the court. The passage does not directly address the dismissal of a case after 14 months of contesting temporary orders, but it highlights the importance of addressing jurisdictional issues early in the proceedings.

[In re Tirey](#)

#### Texas Court of Appeals

##### Extract

*Whether a trial court possesses subject matter jurisdiction is a question of law we review de novo. Powell v. Stover, 165 S.W.3d 322, 324 (Tex. 2005) (orig. proceeding). The party bringing suit bears the burden of alleging facts sufficient to establish subject matter jurisdiction. In re Forlenza, 140 S.W.3d 373, 376 (Tex. 2004) (orig. proceeding). The pleadings are liberally construed in favor of the party invoking jurisdiction. In re S.J.A., 272 S.W.3d 678, 681-82 (Tex. App.-Dallas 2008, no pet.). If the defendant challenges the existence of jurisdictional facts, we must consider relevant evidence submitted by the parties to resolve the jurisdictional issue.*

##### Summary

Subject matter jurisdiction is a legal question reviewed de novo, meaning the court examines it anew without deference to the previous court's decision. The party initiating the suit must allege facts that establish jurisdiction, and the pleadings are interpreted in favor of the party invoking jurisdiction. If jurisdictional facts are challenged, relevant evidence must be considered to resolve the issue. This suggests that if a jurisdictional defect is discovered, it can be grounds for dismissal if the court indeed lacks jurisdiction, regardless of the time elapsed since the case began.

[In re Elliot, 04-22-00552-CV \(Tex. App. Nov 30, 2022\)](#)

#### Texas Court of Appeals

##### Extract

*A court's subject-matter jurisdiction coincides with its authority to validly act. ... 'Subject matter jurisdiction is never presumed and cannot be waived.' ... An order rendered without subject matter jurisdiction is void.*

##### Summary

The passage explains that subject matter jurisdiction is fundamental to a court's authority to act and cannot be presumed or waived. This means that if a court lacks subject matter jurisdiction, any orders it issues are void. Therefore, if a jurisdictional defect is discovered, it can lead to the dismissal of the case, regardless of how long the case has been contested.

[In re Interest of A.J.T., 654 S.W.3d 312 \(Tex. App. 2022\)](#)

#### Texas Court of Appeals

##### Extract

*Though Texas district courts have general jurisdiction over child custody matters, the Texas Legislature adopted the UCCJEA in 1999 as Chapter 152 of the Texas Family Code, which governs those circumstances under which a court has, or loses, jurisdiction over a child custody suit. ... Section 152.201 of the Family Code provides the exclusive jurisdictional basis for a Texas court to make an initial child custody determination. ... For courts of general jurisdiction such as our state district courts, subject-matter jurisdiction usually is presumed, absent a showing to the contrary. ... Because Section 152.201 defines when the court has and does not have subject-matter jurisdiction over initial child custody determinations, subject-matter jurisdiction in this case cannot merely be presumed. It is Section 152.201 that invokes or relinquishes subject-matter jurisdiction in initial child custody matters, contrary to Joshua's attempt to distinguish otherwise.*

##### Summary

Subject-matter jurisdiction in child custody cases is governed by the UCCJEA as adopted in Chapter 152 of the Texas Family Code. Section 152.201 specifically outlines the conditions under which a Texas court has subject-matter jurisdiction for initial child custody determinations. This jurisdiction cannot be presumed and must meet the criteria set forth in the statute. The passage also clarifies that subject-matter jurisdiction cannot be conferred by the actions of the parties, nor can it be waived or consented to. This suggests that if a jurisdictional defect is discovered, it could indeed affect the court's authority to proceed with the case, regardless of the time elapsed or actions taken by the parties.

[In re C.H., 595 S.W.3d 272 \(Tex. App. 2019\)](#)

#### Texas Court of Appeals

## Extract

*However, our determination that Texas has home state jurisdiction under the UCCJEA is not dispositive of this appeal in light of the trial court's determination that Texas is an inconvenient forum. The Act provides that '[a] court of this state which has jurisdiction under this chapter to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum.' § 152.207(a). The issue of inconvenient forum may be raised upon motion of a party, sua sponte by the court, or by the request of another court. Id. Before the court decides that it is an inconvenient forum, it 'shall consider all relevant factors....' § 152.207(b).*

## Summary

Ability of a Texas court to decline jurisdiction if it determines that it is an inconvenient forum, even if it initially had jurisdiction. This decision can be made at any time, suggesting that a jurisdictional defect can be addressed even after a significant period has passed since the case commenced. The court must consider all relevant factors before making such a determination.

[In re Estes, 153 S.W.3d 591 \(Tex. App. 2004\)](#)

## Texas Court of Appeals

### Extract

*Subject matter jurisdiction is never presumed. Texas Ass'n of Bus. v. Texas Air Control Bd., 852 S.W.2d 440, 443-44 (Tex.1993). The existence of a court's subject matter jurisdiction over a case or controversy is a legal question. Mayhew v. Town of Sunnyvale, 964 S.W.2d 922, 928 (Tex.1998). Accordingly, the standard of review is de novo. Id. In examining jurisdiction vested in Texas courts by a statute such as the Family Code, the most important rule is to ascertain and give effect to the Legislature's intent. See State v. Hodges, 92 S.W.3d 489, 494 (Tex.2002). The Legislature's intent is determined by examining the language used in the statute within the context of the entire statute. See id.*

### Summary

The passage emphasizes that subject matter jurisdiction is a legal question and is never presumed. It must be determined based on the statutory language and legislative intent. This means that if a jurisdictional defect is discovered, it can indeed affect the court's authority to hear the case, regardless of how long the case has been contested. The passage suggests that jurisdictional issues can be raised at any time, and if a court lacks subject matter jurisdiction, it cannot proceed with the case.

[In re Forlenza, 140 S.W.3d 373 \(Tex. 2004\)](#)

## Texas Supreme Court

### Extract

*As a general matter, the pleader must allege facts that affirmatively demonstrate the court's jurisdiction to hear the case. See Tex. Ass'n of Bus. v. Tex. Air Control Bd., 852 S.W.2d 440, 446 (Tex.1993). Under the statute, a court acquires exclusive continuing jurisdiction by virtue of a prior child-custody determination. Tex. Fam.Code § 152.202(a). By alleging that the court's prior orders conferred exclusive continuing jurisdiction, Ann satisfied her initial statutory burden. The statute specifically provides that a court retains exclusive continuing jurisdiction until it determines that the significant-connection and substantial-evidence requirements are no longer met. Id. Robert may challenge whether the statutory elements are satisfied, or the court may consider them sua sponte, but Ann has satisfied her initial jurisdictional burden under the statute.*

### Summary

A court in Texas retains exclusive continuing jurisdiction over a case if it has made a prior child-custody determination, unless it is determined that the significant-connection and substantial-evidence requirements are no longer met. The burden is initially on the pleader to demonstrate jurisdiction, but once established, the court retains jurisdiction until it finds otherwise. This suggests that a case cannot be dismissed for lack of subject matter jurisdiction simply because a party raises a jurisdictional defect after a significant period, such as 14 months, unless the court determines that the jurisdictional requirements are no longer satisfied.

[Stallworth v. Stallworth, 201 S.W.3d 338 \(Tex. App. 2006\)](#)

## Texas Court of Appeals

### Extract

*Subject matter jurisdiction is essential for a court to have the authority to resolve a case. Tex. Ass'n of Bus. v. Tex. Air Control Bd., 852 S.W.2d 440, 443 (Tex.1993). A party may challenge a court's subject matter jurisdiction by filing a plea to the jurisdiction. Tex. Dep't of Transp. v. Jones, 8 S.W.3d 636, 638-39 (Tex.1999). When a plea to the jurisdiction challenges the pleadings, we determine if the pleader has alleged facts that affirmatively demonstrate the court's jurisdiction to hear the cause. Texas Dep't of Parks & Wildlife v. Miranda, 133 S.W.3d 217, 226 (Tex.2004). However, if a plea to the jurisdiction challenges the existence of jurisdictional facts — as Wife does here — we consider relevant evidence submitted by the parties when necessary to resolve the jurisdictional*

issues raised, as the trial court is required to do. *Id.* at 227 (citing *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 555 (Tex.2000)).

## Summary

The passage explains that subject matter jurisdiction is fundamental for a court to resolve a case, and a party can challenge it by filing a plea to the jurisdiction. The court must then determine if the pleadings or evidence demonstrate the court's jurisdiction. This is relevant to the question of whether a case can be dismissed for lack of subject matter jurisdiction after a significant period.

[Arnold v. Price, 365 S.W.3d 455 \(Tex. App. 2012\)](#)

## Texas Court of Appeals

### Extract

*Family code section 152.201(b) states that '[s]ubsection (a) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.' Id. § 152.201(b). Because a Texas court could not properly exercise subject matter jurisdiction under section 152.201(a) at the time Price commenced this proceeding or at the time of the child's birth, we hold that the trial court did not have subject matter jurisdiction to make the initial child custody determination. See id. § 152.201(a), (b); see also Waltenburg, 270 S.W.3d at 318 (holding Texas rather than Arizona courts had subject matter jurisdiction over custody proceeding involving a child born in Texas after the initial petition was filed in Arizona).*

## Summary

Exclusive jurisdictional basis for child custody determinations in Texas under the UCCJEA, specifically under Texas Family Code section 152.201. It highlights that if a Texas court does not have subject matter jurisdiction under this section, it cannot make an initial child custody determination. This suggests that if a jurisdictional defect is discovered, it could potentially lead to the dismissal of the case for lack of subject matter jurisdiction, as jurisdiction is a fundamental requirement for a court to hear a case.

[Ruffier v. Ruffier, 190 S.W.3d 884 \(Tex. App. 2006\)](#)

## Texas Court of Appeals

### Extract

*Subject matter jurisdiction is a question of law which we review de novo. Mayhew v. Town of Sunnyvale, 964 S.W.2d 922, 928 (Tex.1998). Subject matter jurisdiction is never presumed, cannot be conferred by consent, waiver, or estoppel at any stage of the proceeding, and may be raised for the first time on appeal. Texas Ass'n of Bus. v. Texas Air Control Bd., 852 S.W.2d 440, 443-44 (Tex.1993); Juarez v. Texas Ass'n of Sporting Officials El Paso Chapter, 172 S.W.3d 274, 277 (Tex.App.-El Paso 2005, no pet.). Subject matter jurisdiction is essential for a court to have authority to decide a case. Texas Air Control Bd., 852 S.W.2d at 443.*

## Summary

Subject matter jurisdiction is a fundamental legal question that can be reviewed at any stage of the proceedings, including on appeal. It cannot be waived or conferred by the parties' actions or consent. This means that even if a party has been contesting temporary orders for an extended period, such as 14 months, they can still raise a jurisdictional defect for the first time, and if the court indeed lacks subject matter jurisdiction, the case can be dismissed.

[McGuire v. McGuire, 18 S.W.3d 801 \(Tex. App. 2000\)](#)

## Texas Court of Appeals

### Extract

*Subject matter jurisdiction is never presumed and cannot be waived. Texas Ass'n of Business, 852 S.W.2d at 443-44; Gonzalez v. Sanchez, 927 S.W.2d 218, 221 (Tex.App.--El Paso 1996, no writ); Abderholden v. Morizot, 856 S.W.2d 829, 832 (Tex.App.--Austin 1993, no writ); Madero Development, 803 S.W.2d at 400; Armstrong v. West Texas Rig Company, 339 S.W.2d 69, 71 (Tex.Civ.App.--El Paso 1960, writ ref'd n.r.e.). Despite these well settled principles, Giovanna contends that Ben waived his jurisdictional complaint when he filed his motion for new trial. This argument confuses personal jurisdiction with subject matter jurisdiction.*

## Summary

The passage from McGuire v. McGuire clarifies that subject matter jurisdiction is a fundamental aspect of a court's authority to decide a case and cannot be waived or presumed. This means that even if a party has been contesting temporary orders for an extended period, such as 14 months, the issue of subject matter jurisdiction can still be raised. If a court lacks subject matter jurisdiction, it cannot proceed with the case, and the case can be dismissed at any stage of the proceedings. This principle is generally applicable in Texas and is not limited to specific types of cases.

## Texas Court of Appeals

### Extract

*It is well-established that a trial court may grant a Texas resident a divorce, even though, as we concluded above, it lacks personal jurisdiction over the non-resident spouse. See Dawson-Austin, 968 S.W.2d at 324-25. 'A court in which a suit for dissolution of a marriage is filed may exercise its jurisdiction over those portions of the suit for which it has authority.' TEX. FAM. CODE § 6.308(a) ('Exercising Partial Jurisdiction') (emphasis added). The use of the term 'may' indicates that the statute is not mandatory, but discretionary.*

### Summary

The court's ability to exercise jurisdiction is discretionary, not mandatory, suggesting that a jurisdictional defect in one part of the case does not automatically lead to the dismissal of the entire case.

## Texas Court of Appeals

### Extract

*Jurisdiction over child custody issues in Texas is governed by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). TEX. FAM.CODE ANN. §§ 152.201-.317 (Vernon 2002 & Supp. 2008)... A Texas court has jurisdiction to make an initial custody determination if: (1) Texas is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from Texas but a parent or person acting as a parent continues to live in Texas; (2) a court of another state does not have home state jurisdiction or the court having home state jurisdiction has declined to exercise jurisdiction on the ground that Texas is the more appropriate forum and: (A) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with Texas other than mere physical presence; and (B) substantial evidence is available in Texas concerning the child's care, protection, training, and personal relationships; (3) all courts otherwise having jurisdiction have declined jurisdiction on the ground that Texas is the more appropriate forum; or (4) no court of any other state would have jurisdiction under subdivision (1), (2), or (3).*

### Summary

Jurisdictional requirements under the UCCJEA for Texas courts to make an initial child custody determination. It specifies conditions under which Texas can claim jurisdiction, such as being the child's home state or having significant connections and substantial evidence in Texas. This is relevant to understanding whether a Texas court had subject matter jurisdiction at the outset of a case. If these jurisdictional requirements were not met, it could potentially lead to a dismissal for lack of subject matter jurisdiction.

## Texas Supreme Court

### Extract

*We hold that, because the child lived in Tennessee with his parents for at least six consecutive months immediately before the child-custody proceeding was commenced, Texas is not the child's home state and the trial court's exercise of jurisdiction was improper. Accordingly, we conditionally grant the petition for writ of mandamus and order the trial court to stay this proceeding and communicate with the Tennessee court. If the Tennessee court does not determine that Texas is a more appropriate forum, the trial court shall dismiss this proceeding.*

### Summary

The passage from Powell v. Stover discusses a situation where the Texas court improperly assumed jurisdiction because Texas was not the child's home state. The court conditionally granted a writ of mandamus to stay the proceedings and required communication with the Tennessee court. If the Tennessee court did not find Texas to be a more appropriate forum, the Texas court was instructed to dismiss the proceeding. This indicates that if a jurisdictional defect is discovered, such as the lack of home-state status, the case can be dismissed for lack of subject matter jurisdiction.

## Texas Court of Appeals

### Extract

*Like standing, mootness is a component of subject-matter jurisdiction. Labrado, 132 S.W.3d at 589. Mootness defeats a court's subject-matter jurisdiction over a particular controversy. State ex rel. D.L.S., 446 S.W.3d 506, 513–14 (Tex.App.–El Paso 2014, no pet.). Because subject-matter jurisdiction is essential to a court's authority to dispose of cases, we may raise the issue sua sponte at any time. Juarez v. Tex. Ass'n of Sporting Officials El Paso Chapter, 172 S.W.3d 274,*

277–78 (Tex.App.–El Paso 2005, no pet.) ; *Labrado*, 132 S.W.3d at 586 (subject matter jurisdiction may not be waived by the parties and may be raised for the first time on appeal by any party or the court itself).

## Summary

Subject-matter jurisdiction is a fundamental aspect of a court's authority to hear a case. It cannot be waived by the parties involved and can be raised at any time, even for the first time on appeal, by any party or the court itself. This means that if a jurisdictional defect is discovered, it can potentially lead to the dismissal of the case, regardless of how long the case has been ongoing.

[Texas Dept. Parks and Wildlife v. Miranda, 133 S.W.3d 217 \(Tex. 2004\)](#)

## Texas Supreme Court

### Extract

*We adhere to the fundamental precept that a court must not proceed on the merits of a case until legitimate challenges to its jurisdiction have been decided. This standard accomplishes this goal and more. It also protects the interests of the state and the injured claimants in cases like this one, in which the determination of the subject matter jurisdiction of the court implicates the merits of the parties' cause of action.*

### Summary

The passage emphasizes the importance of resolving jurisdictional challenges before proceeding with the merits of a case. This principle is crucial in determining whether a case can be dismissed for lack of subject matter jurisdiction, even if the issue is raised after significant time has passed. The passage suggests that if a legitimate jurisdictional defect is identified, it must be addressed, potentially leading to dismissal if the court lacks jurisdiction.

[Tex. Civ. Prac. and Rem. Code § 16.064 Tex. Civ. Prac. and Rem. Code § 16.064 Effect of Lack of Jurisdiction](#)

### Extract

*The period between the date of filing an action in a trial court and the date of a second filing of the same action in a different court suspends the running of the applicable statute of limitations for the period if: because of lack of jurisdiction in the trial court where the action was first filed, the action is dismissed or the judgment is set aside or annulled in a direct proceeding; and not later than the 60th day after the date the dismissal or other disposition becomes final, the action is commenced in a court of proper jurisdiction.*

### Summary

If a case is dismissed due to lack of jurisdiction, the statute of limitations is suspended between the original filing and the refiling in a proper court, provided the refiling occurs within 60 days of the dismissal becoming final. This suggests that if a jurisdictional defect is discovered, the case can be dismissed, but it can be refiled in a proper court without the statute of limitations barring the action, as long as the refiling is timely.

[Tex. Fam. Code § 152.201 Tex. Fam. Code § 152.201 Initial Child Custody Jurisdiction](#)

### Extract

*Except as otherwise provided in Section FAMILY CODE 152.204, a court of this state has jurisdiction to make an initial child custody determination only if: this state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state; a court of another state does not have jurisdiction under Subdivision , or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Section FAMILY CODE 152.207 or FAMILY CODE 152.208, and: (A) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and (B) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships; all courts having jurisdiction under Subdivision or have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section FAMILY CODE 152.207 or FAMILY CODE 152.208; or no court of any other state would have jurisdiction under the criteria specified in Subdivision , , or .*

### Summary

The passage outlines the conditions under which a Texas court has jurisdiction to make an initial child custody determination. It specifies that Texas must be the home state of the child at the commencement of the proceeding or within six months prior, or that no other state has jurisdiction or has declined jurisdiction in favor of Texas. This passage is relevant to determining whether a Texas court has subject matter jurisdiction in child custody cases, which could impact the ability to dismiss a case for lack of jurisdiction.

[Tex. Fam. Code § 155.001 Tex. Fam. Code § 155.001 Acquiring Continuing, Exclusive Jurisdiction](#)

## Extract

*(a) Except as otherwise provided by this section, a court acquires continuing, exclusive jurisdiction over the matters provided for by this title in connection with a child on the rendition of a final order. (b) The following final orders do not create continuing, exclusive jurisdiction in a court: a voluntary or involuntary dismissal of a suit affecting the parent-child relationship; in a suit to determine parentage, a final order finding that an alleged or presumed father is not the father of the child, except that the jurisdiction of the court is not affected if the child was subject to the jurisdiction of the court or some other court in a suit affecting the parent-child relationship before the commencement of the suit to adjudicate parentage; and a final order of adoption, after which a subsequent suit affecting the child must be commenced as though the child had not been the subject of a suit for adoption or any other suit affecting the parent-child relationship before the adoption.*

## Summary

A court in Texas acquires continuing, exclusive jurisdiction over matters related to a child upon the rendition of a final order. However, certain final orders, such as a voluntary or involuntary dismissal of a suit affecting the parent-child relationship, do not create continuing, exclusive jurisdiction. This suggests that if a final order has not been rendered, the court may not have acquired continuing, exclusive jurisdiction, which could potentially affect the case's subject matter jurisdiction.

### [Subject Matter Jurisdiction of Texas Trial Courts](#)

**Texas Pretrial Practice. Volume 1-2 - James Publishing - Scott Brister (Ret.), Dan S. Boyd - 2013-05-05**

## Extract

*Any party or the court on its own motion may raise lack of subject matter jurisdiction. [In re United Servs. Auto. Ass'n, 307 SW3d 299, 306 (Tex 2010).] Indeed, a court is obliged to consider its own jurisdiction even if the parties do not question it. [Id.] The defect may be raised at any time, including on appeal. [Id.]*

## Summary

Subject matter jurisdiction can be challenged at any time, even on appeal, and that the court is obliged to consider its jurisdiction regardless of whether the parties raise the issue. This suggests that a jurisdictional defect can be raised even after 14 months of litigation.

### [Chapter 21-9 Attacking Subject Matter Jurisdiction](#)

**Texas Commercial Causes of Action Claims - Full Court Press**

## Extract

*A plea to the jurisdiction challenges a Texas court's subject matter jurisdiction. A plea to the jurisdiction may be presented at any time before final judgment because subject matter jurisdiction cannot be waived prior to final judgment. A challenge to the court's subject matter jurisdiction may be raised for the first time on appeal.*

## Summary

A plea to the jurisdiction, which challenges a court's subject matter jurisdiction, can be raised at any time before the final judgment. This means that even after 14 months of contesting temporary orders, a party can still raise a jurisdictional defect. The passage also notes that subject matter jurisdiction cannot be waived prior to final judgment and can be challenged for the first time on appeal. This suggests that if a jurisdictional defect is found, it could potentially lead to the dismissal of the case, as subject matter jurisdiction is a fundamental requirement for a court to hear a case.

### [PEREIRA'S AFTERSHOCKS.](#)

**William and Mary Law Review - College of William and Mary, Marshall Wythe School of Law - Hoffman, Lonny - 2019-10-01**

## Extract

*It makes some sense that advocates for an expansive reading would want Pereira to have subject matter jurisdiction implications. At least for Article III courts, a defect in subject matter jurisdiction is considered non-waivable, meaning that it can be raised at any time during the trial of the case, or even afterwards on direct appeal. (191) Moreover, federal courts are obligated to confirm the existence of their subject matter jurisdiction and, if they find it lacking, dismiss sua sponte, regardless of whether the parties raise it on their own. (192)*

## Summary

Nature of subject matter jurisdiction as non-waivable, meaning it can be raised at any time, even after significant proceedings have occurred. This principle is applicable to Article III courts and suggests that if a jurisdictional defect is present, it can lead to dismissal regardless of the stage of the case. While the passage specifically addresses federal courts, the principle of non-waivable subject matter jurisdiction is broadly applicable and can be relevant to state courts, including those in Texas.



## [Pleadings](#)

**Texas Pretrial Practice. Volume 1-2 - James Publishing - Scott Brister (Ret.), Dan S. Boyd - 2013-05-05**

### **Extract**

*Courts liberally construe petitions to find a sufficient showing of subject matter jurisdiction. But if the petition affirmatively shows a lack of jurisdiction, the court's power to act cannot be sustained. The petition's failure to state a jurisdictional amount of damages does not require dismissal for lack of jurisdiction, however, unless the pleading affirmatively shows lack of jurisdiction. [Peek v. equipment Service Co., 779 SW2d 802, 804-805 (Tex 1989).]*

### **Summary**

Texas courts tend to interpret petitions in a way that supports the existence of subject matter jurisdiction. However, if a petition clearly indicates a lack of jurisdiction, the court cannot proceed with the case. This suggests that if a jurisdictional defect is discovered, and it is clear from the petition that the court lacks jurisdiction, the case could potentially be dismissed. The passage does not specify a time limit for raising such a defect, implying that it could be raised at any time if it is evident from the petition.

## [Texas Courts And Subject Matter Jurisdiction](#)

### **Extract**

*Whether a trial court has subject matter jurisdiction is a question of law. Subject matter jurisdiction is never presumed and cannot be waived or conferred by agreement. And the absence of subject matter jurisdiction can generally be raised at any time and can be raised by a court sua sponte.*

### **Summary**

Subject matter jurisdiction is a legal question that cannot be waived or conferred by agreement, meaning it is a fundamental requirement for a court to hear a case. Importantly, the absence of subject matter jurisdiction can be raised at any time, even after significant proceedings have occurred, and can be initiated by the court itself. This indicates that if a jurisdictional defect is discovered, it can indeed lead to the dismissal of the case regardless of the time elapsed or the stage of the proceedings.

## [Plea To The Jurisdiction](#)

### **Extract**

*In deciding a plea to the jurisdiction, courts construe the pleadings in the plaintiff's favor and look to the pleader's intent. However, a court may not weigh the claims' merits, but may only consider the plaintiffs' pleadings and the evidence pertinent to the jurisdictional inquiry. If a plaintiff fails to plead facts establishing jurisdiction, but the petition does not contain incurable defects in jurisdiction, it is a pleading sufficiency issue, and the plaintiff should be allowed the opportunity to amend. On the other hand, if the pleadings affirmatively negate the existence of jurisdiction, then the plea may be granted without allowing the plaintiff an opportunity to amend.*

### **Summary**

The passage explains that when a plea to the jurisdiction is raised, the court examines the pleadings to determine if they establish jurisdiction. If the pleadings do not establish jurisdiction but do not contain incurable defects, the plaintiff may be allowed to amend them. However, if the pleadings clearly negate jurisdiction, the case may be dismissed without amendment. This suggests that if a jurisdictional defect is discovered, it could potentially lead to dismissal if it negates jurisdiction.

This memo was compiled by Vincent AI based on vLex materials available as of June 01, 2025. [View full answer on vLex](#)