

over state tax matters or over bankruptcy cases. A probate court has jurisdiction over a will, but has no subject matter jurisdiction over the crime of burglary. A Justice of the Peace who is given authority to hear misdemeanor cases, has no subject matter jurisdiction to hear any felony cases.

It thus is said in a general sense that subject matter jurisdiction refers to the power of the court to hear and decide a case, or a particular class of cases; this is because jurisdiction of a court is derived from law (constitution or statute), and cannot be conferred by consent.

The law creates courts and defines their powers. Consent cannot authorize a judge to do what the law has not given him the power to do.<sup>7</sup>

Because subject matter jurisdiction is a matter of law and authority of the court to hear a matter, the accused can not waive the lack of it, or even give his consent to it if it does not exist. Thus, the issue of subject matter jurisdiction can be raised at any time during the case, even after a plea has been entered.

Jurisdiction of the subject matter is derived from the law. It can neither be waived nor conferred by consent of the accused. Objection to the court over the subject matter may be urged at any stage of the proceedings, and the right to make such an objection is never waived. However, jurisdiction of the person of the defendant may be acquired by consent of the accused or by waiver of objections.<sup>8</sup>

[I]t is everywhere held that jurisdiction over subject matter or cause of action cannot be conferred upon a Court by consent or waiver, but may be questioned at any stage of the proceedings.<sup>9</sup>

Even if one fails to raise the issue of the lack of subject matter jurisdiction at trial, he can still raise the issue upon appeal.

It is elementary that the jurisdiction of the court over the subject matter of the action is the most critical aspect of the court's authority to act. Without it the court lacks any power to proceed; therefore, a defense based upon this lack cannot be waived and may be asserted at any time. Accordingly, the appellants may raise the issue of jurisdiction over the matter for the first time on appeal although they initially failed to raise the issue before the trial court.<sup>10</sup>

A reviewing court is required to consider the issue of subject matter jurisdiction even where it was not raised below in order to avoid an unwarranted exercise of judicial authority.<sup>11</sup>

There is nothing that one can do, or fail to do, that would cause the issue of subject matter jurisdiction to be lost. Even if a person pleads guilty he can raise the issue later on if the subject matter jurisdiction never existed.

Subject matter jurisdiction cannot be conferred by a guilty plea if it does not otherwise exist.

The guilty plea must *confess* some punishable offense to form the basis of a sentence. The effect of a plea of guilty is a record admission of whatever is well alleged in the indictment. If the latter is insufficient the plea confesses nothing.<sup>12</sup>

In this case a man was charged with a "felony-theft charge" to which he entered into a plea bargain and pleaded guilty. But the facts alleged in the indictment did not constitute the offense charged. There thus was no subject matter jurisdiction, and the conviction was void.

7 *Singleton v. Commonwealth*, 208 S.W.2d 325, 327, 306 Ky. 454 (1948).

8 21 *American Jurisprudence*, 2nd, "Criminal Law," § 339, p. 589.

9 *Harris v. State*, 82 A.2d 387, 389, 46 Del. 111 (1950).

10 *Matter of Green*, 313 S.E.2d 193, 195 (N.C.App. 1984).

11 *Honomichl v. State*, 333 N.W.2d 797, 799 (S.D. 1983).

12 *People v. McCarty*, 445 N.E.2d 298, 304, 94 Ill.2d 28 (1983), cases cited.