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. 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.10

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.11

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.12

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.

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