*Civil vs. criminal:*

*Criminal matters are those involving an allegation of a criminal act by the state against an individual. One party is Crown Counsel, the prosecutor representing the state (society), and the other is the individual accused. There may be a single accused and that may be an individual or a society or corporation or there may be multiple accused.*

*Civil matters are those involving a dispute between individuals. The issue is nearly always about money or money’s worth.*

***The Fundamental Principles of the Criminal Law:***

*What is a* ***crime****?*

***A crime is an intentional wrongful act or omission that causes harm or a risk of harm to another and that society seeks to repress through a sanction***

*“Essential averments”=* ***The essential elements of the offence* – you only need to know this term for our purposes**

To aver is to allege and an averment is an allegation.

Every offence must be proved beyond a reasonable doubt for there to be a conviction and to permit the imposition of a sanction (a penalty we call a sentence).

Each offence has certain specific things that must be proved.

Those things include the date,

the jurisdiction, court needs to have jurisdiction over where it is alleged to have happened (B.C. for our courts)

**the identity of the accused,**

the identity of the victim if there is one,

or the behaviour that is unlawful if victimless,

or the character of the item possessed if contraband,

and the specific actions that make up the offence.

Each essential (element) must be proved beyond a reasonable doubt.

**Process Versus Proceeding:**

*Proceeding* refers to the commencement of an action over which a court has jurisdiction (authority) while *process* refers to the entirety of what goes on between the time of the event, which results in a complaint, to the end of the matter, however it may end. More on complaints and events below.

Not every process results in a proceeding, while without an event being brought to the attention of the investigating authorities (the police for our purposes) there is never a process either. Something must trigger the process.

**The Start of the Criminal Process – The Complaint**

Role of the police:

1. Keeping the Peace – Common law

Traditionally police officers have two responsibilities. The first of these is to keep the peace and prevent breaches of it. What is a breach of the peace? Some old language talks about behaviour “against the peace of our Lady the Queen”. Disorderly conduct.

1. Investigating breaches of the peace – truth-seeking

The second and more important role, for our purposes, is the investigation that follows a reported breach of the peace. Any such breach must be an offence, and we are concerned in this course with offences found within the Criminal Code. Once the police are made aware of a breach of the peace, it is in their discretion to decide whether and how far to conduct an investigation into the activities. That task of conducting an investigation is truth-seeking. The goal is not to charge someone, it is not to put someone in jail, it is almost entirely to find out what happened, and once they know, to determine if it amounts to a crime.

Types of Offences: In order to understand the authority to arrest, you will have to know something about the types of offences that exist in the Criminal Code.

Summary, Hybrid, Indictable, Absolute Jurisdiction

Sees sections 175, 266, 344, 235, 787.1, 469, 553 of the *Criminal Code* for examples and for absolute jurisdiction of the Provincial or Supreme Court

**Summary**

Minimal penalty offences -no election by Cr or acc

**Indictable**

High sentences – serious offences – election by accused

**Hybrid**

Wide range of sentences based on spectrum – election by Cr then if indict election by accused for mode of trial

Powers of arrest (Police and Civilian) – section 494, 495 of the Criminal Code

What is an ***arrest***? It is a physical or psychological restraint by someone having the lawful authority to take another into custody. Notably once someone is taken into custody, they become their jailers’ responsibility.

This is to be contrasted with a ***detention***, for example, that could be fleeting and usually does not involve a physical restraint, and may not be in relation to your conduct or not for anything specific, but may be for information gathering or to secure you against harm.

An arrest is for a reason, and that means it is in relation to a specific allegation of an offence having been committed.

Arrests can be made by civilians (section 494 of the *Criminal Code*) and by police officers (section 495 of the *Criminal Code*).

Why do we care? Because an arrest or detention can trigger a right. See section 10 of the *Charter of Rights and Freedoms*.

The Principle of Restraint – section 493.1 of the *Criminal Code*

**493.1** In making a decision under this Part, a peace officer, justice or judge shall give primary consideration to the release of the accused at the earliest reasonable opportunity and on the least onerous conditions that are appropriate in the circumstances…..

5) **Section 503** of the *Criminal Code* says that if the police arrest someone, whether with or without a warrant, that person must be brought before a justice (means a judge of the Provincial Court or equivalent) within 24 hours of the arrest or, if that cannot be done because a “justice” is not available, as soon as possible.

Practically a judge or equivalent is always available because they can be reached by telephone or by a virtual platform from anywhere in the province. That was not always the case.

A good example of a section having application within a part of the legislation. In order to know of this section, you would have to read the whole part. You might do that if you want to know about how to compel (make) someone attend court when charged with a criminal offence.

Also a good indicator of the way in which we approach pre-conviction jailing of persons.

**Release** – sections 497 to 501 *Criminal Code*

No release obligations – *Criminal Code* section 503 (IF the police do NOT release the accused)

**Taking before justice**

* **503** **(1)** Subject to the other provisions of this section, **a peace officer who arrests a person with or without warrant and who has not released the person** under any other provision under this Part shall, in accordance with the following paragraphs, **cause the person to be taken before a justice to be dealt with** according to law:
  + **(a)** if **a justice is available within a period of 24 hours** after the person has been arrested by the peace officer, the person shall be taken before a justice without unreasonable delay and in any event within that period; and
  + **(b)** **if a justice is not available within a period of 24 hours after the person has been arrested by the peace officer, the person shall be taken before a justice as soon as possible.**

***It is important that you know that there does not need to be an arrest for someone to be charged with an offence. Someone can be compelled to come to court in other ways including by way of a summons or a warrant or even an appearance notice delivered to the person by a police officer.***