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ACRONYMS

Bail Act – ‘BA’

Crimes Act 1959 (Vic) – ‘CA’

Evidence Act – ‘EA’

Jury Directions Act – ‘JDA’

Victorian Charter of Human Rights and Responsibilities – ‘VCHRR’

Beyond reasonable doubt – ‘BRD’

Common law – ‘CL’

1: ARREST AND BAIL

Arrest is the deprivation of liberty to go where they please: *Michaels v The Queen* (1995).

Lawful authority to arrest – CA s 457

The power of arrest comes from either a statute or a warrant issued by the court.

Citizen's arrest – CA s 458

“Any person can apprehend another person at any time whom he **finds committing** any offence where he believes on **reasonable grounds** the arrest is necessary to **ensure appearance** in court, **preserve public order**, **prevent continuation** of the offence or for the **safety or welfare** of the public or offender.”

‘**Finds committing**’ is extended by CA s 462 to include finding the person engaging in conduct that the finder believes on reasonable grounds that the person is guilty of an offence: *De Moor v Davies* [1999].
De Moor v Davies [1999]: The extended definition was used to justify the arrest of a person who was doing fraudulent credit card transactions by someone who was not present during the transactions, and therefore not caught ‘red handed’.

Police arrest – CA s 459

The police can **arrest at any time** a person who they believe on **reasonable grounds** has committed an **indictable offence** inside or outside Victoria. There is no requirement for the police to find the person committing the offence.

De Simone [2008]: The police attempted to use their CA s 459 powers to justify an arrest of a man for theft, however the court found that this was a mere reasonable *suspicion*, not a reasonable *belief*. The arrest was therefore unlawful.

George v Rocket (1990): “A **suspicion** that something exists is more than a mere idle wondering whether it exists or not; it is a positive feeling of actual apprehension or mistrust amounting to a slight opinion, but without sufficient evidence.

“**Belief** is an inclination of the mind towards assenting to, rather than rejecting, a proposition and the grounds which can reasonably induce that inclination of the mind may, depending on the circumstances, leave something to surmise or conjecture.”

Lawful arrest

The elements of a lawful arrest as per common law are:

1. A *sufficient act of arrest* that deprives the arrestee of their liberty.
 - The arrestee must understand that they have lost their liberty: *R v Inwood* [1973].
2. Arrestor must tell arrestee the *reason for arrest*: VCHRR s 21(4).
3. *Reasonable force* may be used to deprive the arrestee of their liberty: CA s 462.
 - Physical restraint is not required if the arrestee submits.

Entry onto private property – CA s 459A

The police can enter and search any place where the police believes on reasonable grounds the person to be and the officer believes on reasonable grounds that the suspect has committed a serious indictable offence or is escaping from lawful custody.

Halliday v Neville (1984): There's an implied license in CL to be able to enter onto property for the purpose of walking up to the front door and knocking on it. This licence can be revoked by the occupant.

Nicholson v Avon [1991]: Police can lawfully enter premises under CL to prevent a breach of the peace and once inside, they can use citizen's arrest powers.