

Crim Exam Notes

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1 Crime Generally

- ‘Golden thread’ in *Woolmington v Director of Public Prosecutions* [1935] AC 462: that is the duty of the prosecution to prove the prisoner’s guilt beyond reasonable doubt subject to the exception of insanity and statutory exceptions.
 - Additionally, generally in Australia, it is for the jury to determine beyond reasonable doubt and the trial judge should not define the term: *Dawson v R* (1961) 106 CLR 1
- Positivist approach—crime requires penal provisions of the state
- Relying on proceduralist construction of processes: HLA Hart
 - *Proprietary Articles Trade Association v Attorney General (Canada)* [1931]
 1. Punishment requires five elements:
 2. Pain or other unpleasant consequence
 3. Must be for an offence against legal rules
 4. Must be to an actual or supposed offender for their offence
 5. Must be administered by authority constituted by a legal system which has been infringed by the offender
- Subjective conception of crime
 - Crimes in themselves without reference to the legal processes
 - * Public wrong as conduct
 - * Breach of the peace
 - Is it simply wrong to the public or of concern to the public?

1.1 Why would something be a crime?

- Prevention of harm
- Mills, utilitarian, restrictions on individual liberty must be curtailed unless justified in order to prevent harm to others