

## **THEORY OF OFFENSE:**

It is the lens through which we can analyze whether a particular conduct is a crime or not.

- **Observation and analysis of facts (conduct).**
  - Isolate the relevant conduct, i.e., the conduct that may potentially be criminal, from other conduct.
  - Analyze the conduct (break it down in relevant parts)
- **Definitional terms**
  - Find the definition of the offence most likely to coincide with the conduct.
  - Break down the elements of the offence.
- **Concurrence between conduct and definitional terms**
  - Determination if there is a match between facts (conduct) and legal requirements of the crime in question.
  - Theory of offence permits to do the analysis of whether there is a match or not.

A crime is an actus reus performed with the required mens rea, provided that there are no defenses.
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## **ACTUS REUS**

It is the physical act specified in the crime.

The actus reus consists of a voluntary act that causes social harm.

- **Voluntary act:**
  - Voluntary: The threshold is very low. It simply requires a willed contraction of a muscle or a movement of the body which follows our volition. So, for example, epileptic seizures are not voluntary.
  - Act: it is simply a bodily movement, a muscular contraction. Examples would be to pull the trigger of a gun, to blink an eye or simply put one leg in front of the other to walk.
- Causation
- But-for test: but-for the criminal conduct, the harm would not have resulted. Criminal conduct does not have to be the sole cause.
- Social harm

- Social harm is the negation, endangering or destruction of an individual, group or state interest which was deemed socially valuable. It may be explicitly stated in the rule (definitional) or it may be inferred from the rule (underlying).
- It may be expressed as (i) a wrongful conduct, e.g., driving under the influence of alcohol; (ii) wrongful result, e.g., the death of another human being; (iii) attendant circumstances, e.g., something that is neither a result nor a conduct, e.g., lack of consent. The expression of social harm in the rule may also include any combination of the above.

### **MENS REA**

The particular state of mind provided for in the rule.

- **Intention:** “I want to”. (subjective test)
  - The perpetrator’s purpose, desire, intention or conscious objective to cause social harm.
  - Transfer intent (bad aim cases): the law transfers the perpetrator’s state of mind regarding the intended victim to the unintended one.
- **Knowledge:** “OK, I know but I don’t mind. So be it”. “I don’t want to know.” [Also: “I don’t want to know.”] (subjective test)
  - Our courts have equated willful blindness with actual knowledge. The idea behind this is that an accused cannot deliberately remain ignorant and escape criminal liability as a result. Deliberately choosing not to know something when given reason to believe further inquiry is necessary can satisfy the mental element of an offence requiring knowledge.
- **Recklessness:** “No, it won’t happen”. (subjective test)
  - The perpetrator disregarded a substantial and unjustifiable risk of which he was aware (subjective test).
- **Negligence:** “I didn’t even think of it”. (objective test)
  - A person’s conduct is negligent if it constitutes a deviation from the standard of care that a reasonable person would have observed in the perpetrator’s situation.

### **DEFENSES**

- Insanity

- Intoxication
- Duress
- Necessity
- Entrapment
- Self defense