



# **Legal Methodology: Introduction to German practical case-solving**

Example: European Union Law

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CLUSTER OF EXCELLENCE  
IN EUROPEAN AND  
INTERNATIONAL LAW

# Introduction: Legal Methodology

- Means the art of argumentation
- Legal studies should enable students
  - To have an overview about the laws
  - To gain a legal understanding
  - And to have the possibility to methodical work
- The goal is to acquire the ability to find solutions to previously undecided cases, by being prepared to develop, weigh and refute new ideas in open discussion, and then follow the steps towards a case-solving with well-founded and substantiate arguments.

# Syllogistic approach

- General statement (major premise)
- Specific statement (minor premise)
- Conclusion

→ Is Socrates mortal?  
All men are mortal.  
Socrates is a man.  
Therefore, Socrates is mortal.

# 4 Steps in Opinions

- Hypothesis
- Definition
- Subsumption
- Result

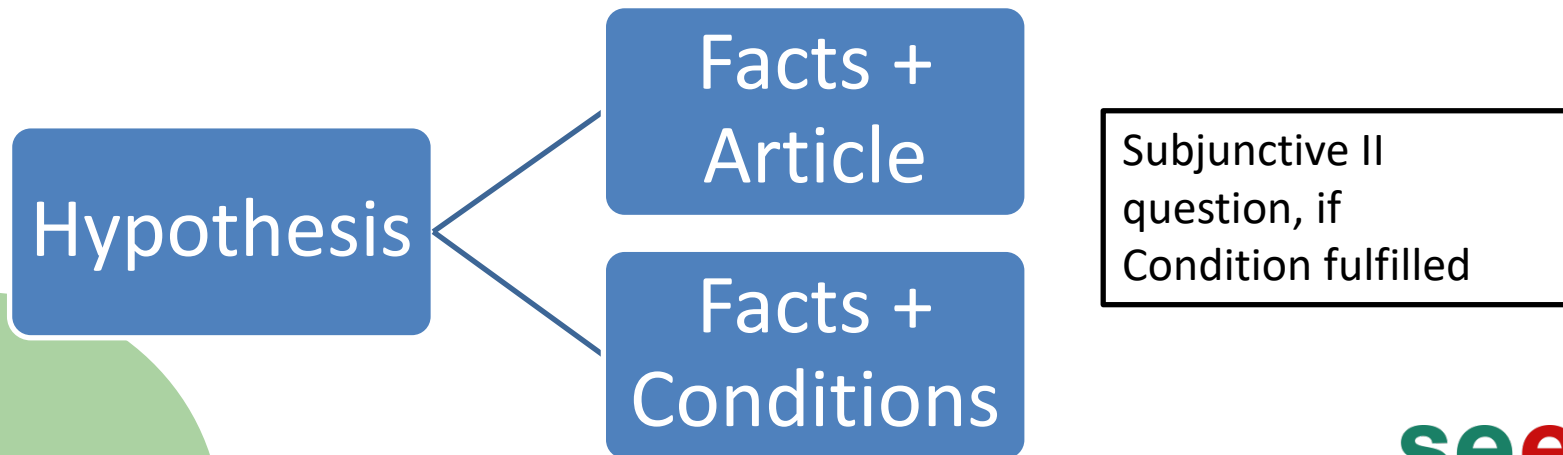
→ The question is, if Socrates is mortal?  
Mortal is, who is a man.  
Socrates is a man.  
Socrates is mortal.

# 4 Steps in Legal Opinions

- Hypothesis: T could have been treacherous.
- Definition: Treacherous acts, who exploits the innocence and helplessness of the victim.
- Subsumption: T hid behind the door that O could not hear him. Thus, T has exploited the innocence and helplessness of O.
- Result: T was treacherous.

# Hypothesis

- Make clear what you want to check!
- Two types:
  - Is one precondition fulfilled?
  - Is one article fulfilled?



# Definition

- To prevent that students solve the case by instinct
- What to define?

Hypothesis asks for conditions	Definition explains conditions
Hypothesis asks for articles	Definition explains conditions of the articles

- Sources
  - Legal definitions
  - Courts
  - Academia
  - Interpretation

# Subsumption

- Application of the definition on the facts of the case





# Result

- Answer to the Hypothesis with „yes“ or „no“
- Don't forget to use the facts of the case.
  - The action was causal for the success.
  - The shot of T was causal for the death of O.

## Be aware of...

- A legal opinion is not a judgement.
  - A judgement states first the result and give then a reasoning.
- The four steps can be interrupted for new four steps
- Don't forget to use
  - Legal interpretation
  - Legal argumentation

# Legal interpretation

- Needed for:
  - Undefined legal terms
  - Discussion of different opinions
  - Development of definitions
- Where:
  - Interpretation of conditions → Definition
  - Contract or action of a person → Subsumption

# Legal Interpretation

- Grammatical interpretation
  - Historical interpretation
  - Systematic interpretation
  - Teleological interpretation
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- Constitutional compliant interpretation
  - EU-directive compliant interpretation

# Legal argumentation

- Legal correspondence/analogy
  - Two similar cases will be treated equally
- Argumentum e contrario
- Argumentum a fortiori
- Argumentum ad absurdum

# Legal Opinion in Criminal Law

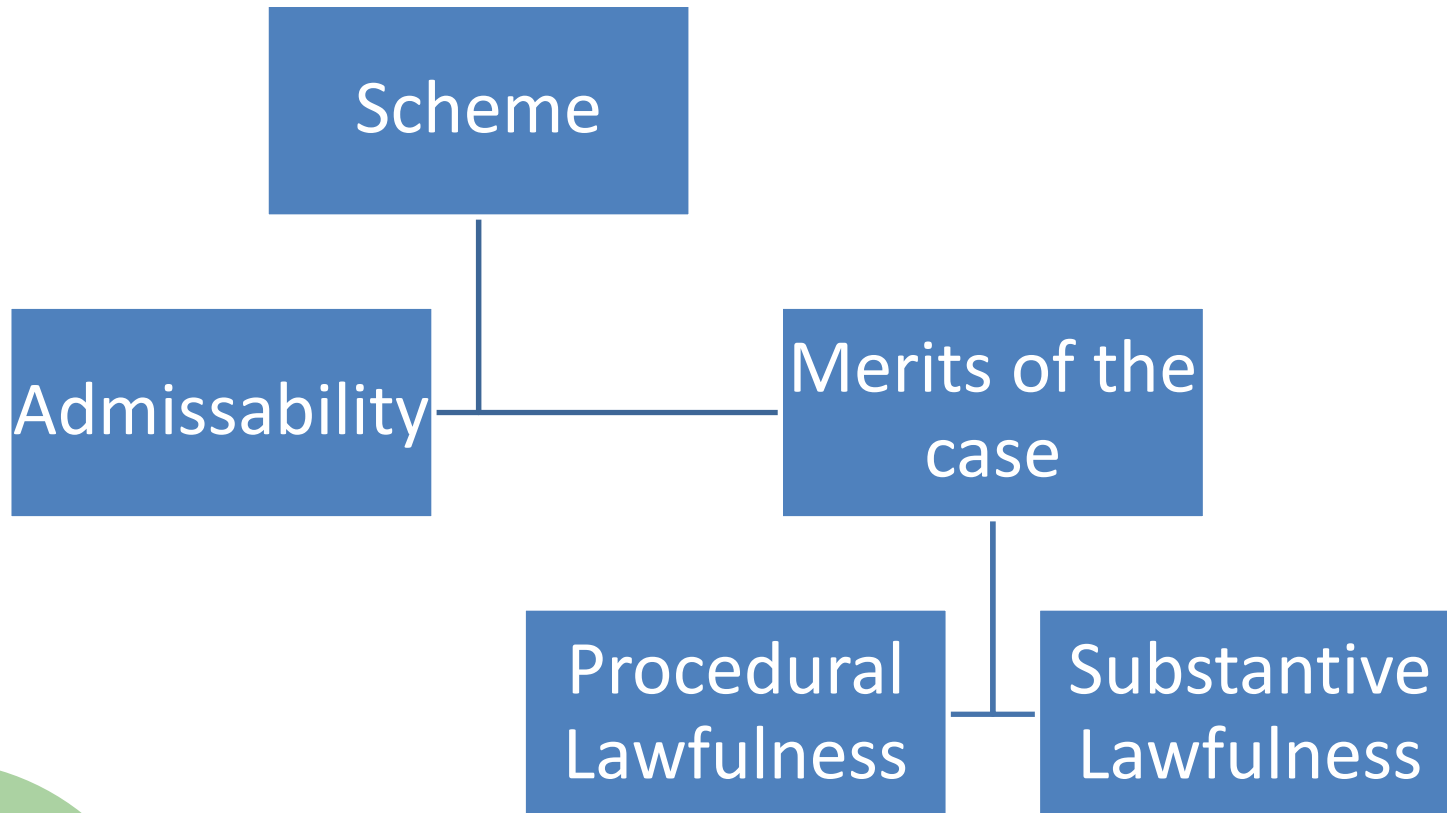
- Essential to know: Who did what with whom according to which article?
- Scheme:
  - I. Facts
  - II. Unlawfulness
  - III. Guilt
  - IV. Reasons which can exclude a punishment
  - V. Reasons for the assessment of the punishment
  - VI. Formal application

# Legal Opinion in Civil Law

- Essential to know: Who wants what of whom according to which article?
- Scheme:
  - I. Contractual rights
  - II. Contractual similar rights
  - III. Property rights
  - IV. Tort rights
  - V. Unjustment enrichment



# Legal Opinion in Public Law





# How this works in practice?

## THE FACTS

- Analyse the facts and the question of the case?
  - What exactly happened?
  - When and where?
  - Who is involved?
- The facts are clear: Do not add anything. Do not know it better.
- Read the case several times
- Make a sketch with involved persons, chronology of the story and certain events
- Avoid reading the problems, which are familiar to you, into the facts of the case
- Be careful by identifying a real case → the case can be changed
- Only answer the question which was asked
- Make notes and brainstorm while reading several times

# How this works in practice?

## THE OUTLINE

- Draw up an outline which answers all questions before writing
- Certain basic structure is compelling:

Case question	Structure
Chances of success of a certain legal action	<ol style="list-style-type: none"><li>1. Admissibility of the action</li><li>2. Merits of the case</li></ol>
Constitutionality of a statute	<ol style="list-style-type: none"><li>1. Formal constitutionality</li><li>2. Substantive constitutionality</li></ol>
Compatibility of EU Law with primary law	<ol style="list-style-type: none"><li>1. Lack of Competence</li><li>2. Infringement of essential procedural requirements</li><li>3. Infringement of the treaty or any other substantive law</li><li>4. Misuse of power</li></ol>
Violation of economic fundamental freedoms of EU citizens	<ol style="list-style-type: none"><li>1. Sphere of protection</li><li>2. Encroachment/Interference</li><li>3. Justification</li></ol>

# How this works in practice?

## THE WRITING-DOWN

- Do not start writing-down before you answer all aspects of the examination, all relevant legal norms and all problems.
- Make sure they are all at the correct place.
- Have the right emphasize: legal scientific discussions are more interesting than admissibility criteria
- Write in an objective and precise style, do not refer to yourself in your writing, do not use any emotional expressions