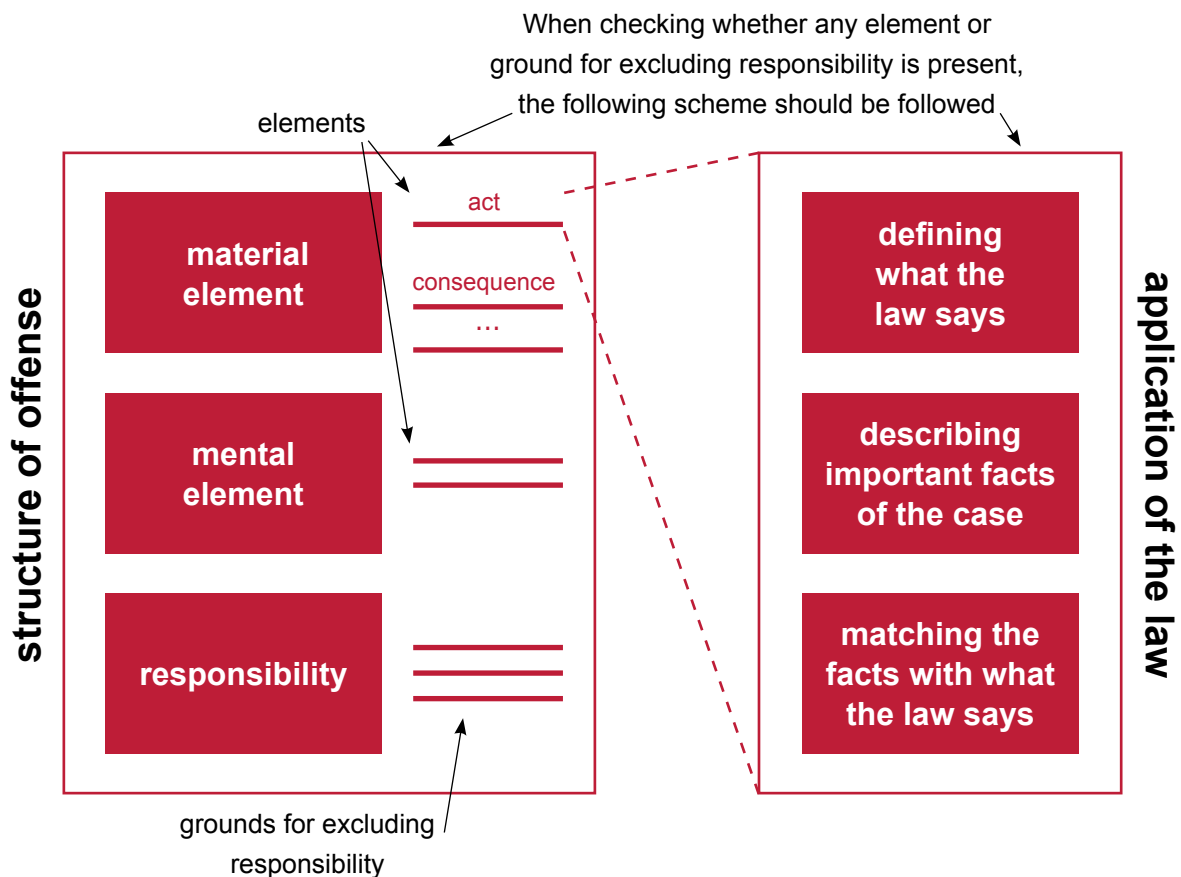


3.2. Application of law

As described above, convicting a person is subject to fulfilment of certain conditions which must be checked. The following describes the application of law, i.e. how the presence of a condition shall be checked. Application always consists of three stages which may be subject to legal arguments.

The question to be answered before reaching any legal conclusion is: *do the factual circumstances correspond to the law?* In other words, does the law cover the specific situation?

The three stages of legal argumentation are derived from this question. First, it is necessary to establish the meaning of „corresponds to the law“ or the exact contents of the law. Second, it is necessary to establish all factual circumstances, i.e. what happened and how did it happen. Once it has been established what corresponds to the law means in the given circumstances and what the factual circumstances are, we have enough information to answer that question.



Each element and circumstance excluding responsibility must be checked in accordance with this scheme of application

This scheme is the basis for the application of any legal provision. It should be noted, however, that each element may not need to be thoroughly considered if a circumstance is self-evident. For example, it is not necessary to waste time to convince the court that a mobile phone is a thing.

Three stages of legal reasoning

One: interpretation of a provision or what is written in the law?

It may appear that everything has been written in the law, but legal provisions are very general and a word may carry different meanings. Therefore, the first task is to establish what is written in the relevant provision. This is called „interpretation of the law“.

The aforementioned Section 182 of the Estonian Criminal Code provides: „An adult person who induces a person of less than 18 years of age to consume alcohol shall be punished by a pecuniary punishment or up to one year of imprisonment.“

What is the meaning of „induce“? Does inducing involve convincing a minor to consume alcohol? Or is it enough to give a minor a bottle and say: „Drink if you want to?“ Or if an adult person speaks of his/her love of alcohol in the presence of a minor, could this also be inducing?

The interpretation of laws is facilitated by earlier court judgments, opinions of legal scholars etc. In this simulation, legal policy arguments will be sufficient. A legal policy argument is a justification of an interpretation by its consequences. While all other proof of a given interpretation (e.g. earlier judgments) implies that a given interpretation **is** correct, a legal policy argument is one which indicates what the correct interpretation **should be**.

For example, it may be reasoned that inducing should be construed as not covering the consumption of alcohol in the presence of a minor because this would inappropriately restrict the freedom of adults to consume alcohol without having to constantly worry about minors seeing them. The opposite argument might be that such an interpretation could prevent careless alcohol consumption among adults and thus reduce its

negative effect on minors.

Both of the above are legal policy arguments which justify an interpretation by its social consequences in case of a consistent interpretation of a provision according to one argument or another.

Two: establishing the facts of a case or what really happened?

Prosecution and defence may have different versions of the factual circumstances – in other words, how did the accused behave.

The prosecution claims that adult X approached 16-year old Y on House Street at 6:35 PM on 04.05.2011, pressed a bottle of beer into his hand and said in a serious voice: „Drink it now!“. The defence claims that X did in fact walk that street at that time, but did not speak with Y or hand him a beer bottle.

To establish the truth, the court shall examine both sides' witnesses and review other evidence, taking into account that the accused gets the benefit of the doubt.

In our simulation, this stage will, for both sides, mostly involve finding the relevant facts in the case.

Three: subsumption or do the facts of the case correspond to the provisions of the law?

The question in this stage that with which we started the legal analysis in the first place – *do the facts correspond to the law?* It should be noted that the first two stages have already yielded a certain interpretation of the law and a clear picture of the circumstances of the case.

In practice, however, most disputes relate to the interpretation of the law or the factual circumstances. Nevertheless, it is always possible to claim that the established facts do not meet the established interpretation of the law, while agreeing to the other party's positions on facts and interpretation.

Let's assume that the prosecution is able to prove at the interpretation stage that „inducing to consume alcohol“ means that a person gives alcohol to a minor and encourages him/her to drink it; is factually proven that X did in fact press a bottle of beer in Y's hand and said in a serious voice „Drink it now!“. Now (at the third stage) the prosecution will have

to point out that beer = alcohol, pressing a bottle in the hand = giving alcohol, and saying „Drink it now!“ in a serious voice = inducing.

Dispute and arguments in court

For the prosecution, it is most important to guess what issues are likely to become the main subject of dispute. Its objective is to put all the time and energy into argumentation related to those issues. Otherwise, the issues which are crucial for deciding on the guilt of the accused could be overlooked.

Although it may not be necessary to explain each aspect of application of the law according to the scheme, the prosecution will have to convince the judge that all the elements of offence are present and factual circumstances fully meet the criteria provided in the law concerning the crime.

The defence, on the other hand, is not obliged to do anything. The defence may even remain silent throughout the trial and if the prosecution fails to prove the guilt of the accused, the judge will have to acquit the latter even if the defence did not actually contest any of the prosecution's claims. Of course, the defence may contest the claims in all three stages and does not have to accept anything. However, it is more feasible to choose a few crucial facts for which the defence finds the prosecution's claims to be most erroneous, and point out the main reasons why the accused should not be convicted. In short, the defence should focus its time and energy on arguments relating to those crucial issues.

Conclusion

The 3 stages of legal argumentation are always there. Even if you hear somebody in the street shouting "that man is a thief. Capture him!", it can be broken down into these 3 layers. What the shouter means is that a thief is somebody who takes away things that belong to other people and the person running down the street has just taken away somebody's purse and therefore, the facts and the law match.

This is also the way that the Rome Statute should be analysed. When for example the defence and prosecution agree on what happened but still argue over whether the accused was acting under duress, it means that they have different definitions of duress and whoever's definition is the same as the opinion of the judges, should win this particular debate.