

Three Logical Arguments for Divorce Settlement

BY RONALD S. GRANBERG

You represent wife Wanda during divorce settlement negotiations with her husband Harold. I represent Harold. Our clients' primary dispute is over the enforceability of section 7 of their prenuptial agreement, in which Wanda waived her interests in certain assets. You and Wanda contend that section 7 is too ambiguous to be enforced; Harold and I counter that section 7 is specific enough for enforcement.

Wanda makes Harold a settlement offer. He rejects it. Your goal is to persuade Harold to accept the settlement offer. You want to convince Harold that he will lose the prenup issue if the case goes to trial: the court will rule section 7 void due to ambiguousness. As usual, you skillfully use law's three logical arguments: **deductive syllogism, inductive generalization, and inductive analogy.**

The syllogism states Wanda's position:

Major Premise All ambiguous prenup terms are unenforceable.
(statement of law)

Minor Premise *The prenup term at bench is ambiguous.*
(statement of fact)

Conclusion The prenup term at bench is unenforceable.
(ruling)

If you establish the "all ambiguous prenup terms are unenforceable" statement of law and the "prenup term at bench is ambiguous" statement of fact, the court must rule the prenup term at bench unenforceable. Deductive syllogism requires that ruling.

A line of appellate decisions in your jurisdiction has voided contract terms on the ground that the terms were too ambiguous for enforcement. You will attempt to establish the "all ambiguous prenup terms are unenforceable" statement of law by applying the inductive generalization argument to this line of precedent.

A prenup term that was held unenforceable in a previously published appellate decision bears similarities to section 7. You will attempt to establish "the prenup term at bench is ambiguous" statement of fact by applying the inductive analogy argument to those similarities.

Two categories of statements

Logic uses two categories of statements—definitional statements and empirical statements:

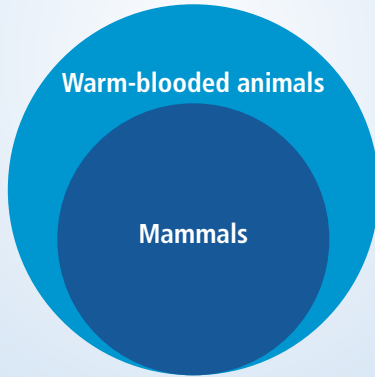
- A definitional statement is always true: it is true by definition. A definitional statement is a statement of law.
- An empirical statement may or may not be true: it is subject to proof. An empirical statement is a statement of fact.



Published in *Family Advocate*, Vol. 37, No. 3, (Winter 2015) p. 20-23 and 28. © 2015 by the American Bar Association. Reproduced with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

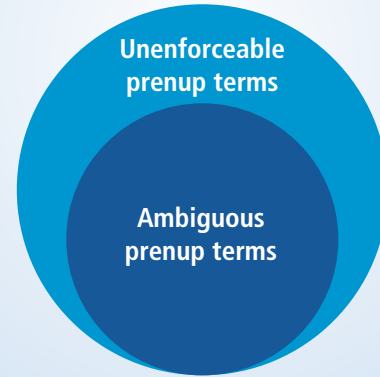
General Definitional Statement

Here is a *general example of a definitional statement*:
“all mammals are warm-blooded.”
This statement is certain, because being warm-blooded is part of the definition of being a mammal.



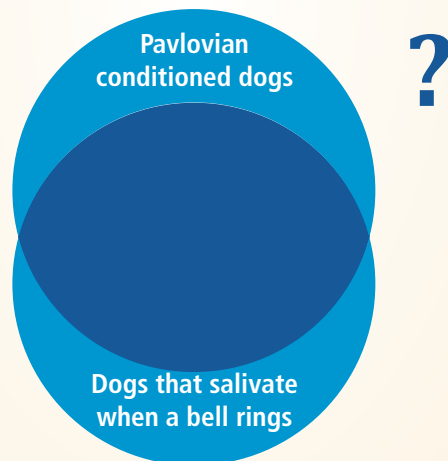
Legal Definitional Statement

Here is a *legal example of a definitional statement*:
“all ambiguous prenup terms are unenforceable.”
This statement is certain, because by legal precedent being unenforceable is part of the definition of being ambiguous.



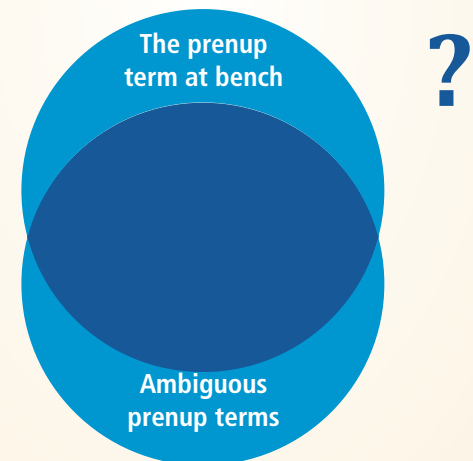
General Empirical Statement

Here is a *general example of an empirical statement*:
“a Pavlovian-conditioned dog will salivate when a bell rings.” As scientists conduct more and more Pavlovian conditioning experiments and discover that all tested Pavlovian-conditioned dogs salivate when a bell rings, it seems increasingly safe to inductively conclude that “a Pavlovian-conditioned dog will salivate when a bell rings.” The conclusion will never be certain, however, because some day a scientist may discover a dog that undergoes Pavlovian conditioning, but doesn’t salivate when a bell rings.



Legal Empirical Statement

Here is a *legal example of an empirical statement*:
“the prenup term at bench is ambiguous.”
A trial over a prenup term is similar to a scientific experiment, the object of which is to determine whether the term is ambiguous. After courtroom/laboratory testing, some prenup terms are judged specific enough for enforcement, whereas other prenup terms are judged too ambiguous for enforcement. The ambiguousness or enforceability of a prenup term is subject to empirical proof on a case-by-case basis.



Mathematics is based on definitional statements. Science is based on empirical statements. Law is based on both definitional and empirical statements. A definitional statement is a “statement of law,” whereas an empirical statement is a “statement of fact.”

Two categories of logical operations

There are two categories of logical operations—deductive and inductive:

- Deductive logic begins with a general proposition (e.g., “all dogs” or “all prenup terms”).
- Inductive logic begins with a particular proposition (e.g., “this dog” or “the prenup term at bench”).

There are two deductive arguments—“general-to-general” and “syllogism.”

Deductive logic, which begins with a general proposition, ends either:

- With a general proposition (such “general-to-general” logic is rarely used), or
- With a particular proposition (“syllogism”).

There are two inductive arguments—“generalization” and “analogy.” Inductive logic, which begins with a particular proposition, ends either:

- With a general proposition (“generalization”) or
- With a particular proposition (“analogy”).

In table form:

Deductive Logic	From general to general (rarely used)	From general to particular <i>Syllogism</i>
Inductive Logic	From particular to general <i>Generalization</i>	From particular to particular <i>Analogy</i>

A conclusion obtained through deductive logic is certain. A conclusion obtained through inductive logic is probable, not certain.

Mathematics is based on deductive logic. Science is based on inductive logic.

Law is based on both deductive and inductive logic:

- *Deductive syllogism* applies *general* legal principles to *particular* facts proven in the case at bench.
- *Inductive generalization* decides whether *particular* appellate rulings have created *general* legal principles.
- *Inductive analogy* decides whether *particular* appellate precedents apply to a *particular* case at bench.

In table form:

Deductive Logic		Syllogism: Applies <i>general</i> legal principles to <i>particular</i> facts proven in the case at bench.
Inductive Logic	Generalization: Decides whether <i>particular</i> appellate rulings have created <i>general</i> legal principles.	Analogy: Decides whether <i>particular</i> appellate precedents apply to a <i>particular</i> case at bench.

Logic's deductive syllogism argument

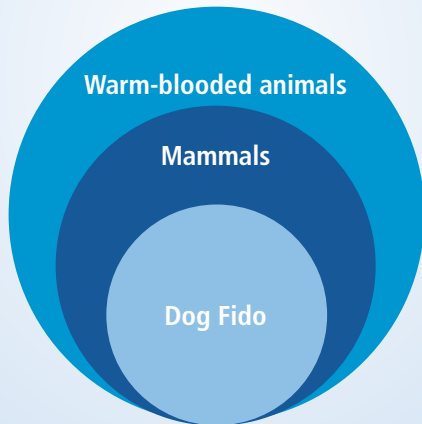
General Deductive Syllogism

Here is a *general example of deductive syllogism*:

Major Premise All mammals are warm blooded.

Minor Premise Dog Fido is a mammal.

Conclusion Therefore, dog Fido is warm blooded.



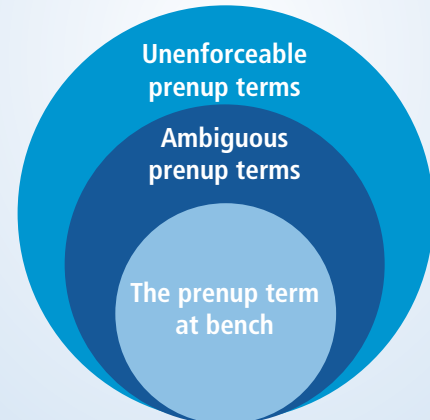
Legal Deductive Syllogism

Here a *legal example of deductive syllogism*:

Major Premise All ambiguous prenup terms are unenforceable.

Minor Premise The prenup term at bench is ambiguous.

Conclusion The prenup term at bench is unenforceable.



Because an appeal alleging a major premise error (i.e., an erroneous statement of law) is determined by the “de novo” standard of review, an error of law (unless a “harmless” one) should warrant reversal. Contrariwise, because an appeal alleging a minor premise error (i.e., an erroneous statement of fact) is determined by the “substantial evidence” standard of review, an error of fact seldom warrants reversal.

Law school teaches the deductive syllogism as IRAC (Issue, Rule, Analysis, Conclusion), where:

- “Issue” defines the syllogism’s *subject matter*;
- “Rule” is the syllogism’s *major premise*;
- “Analysis” applies the syllogism’s *major premise* (rule) to its *minor premise* (facts); and
- “Conclusion” is the syllogism’s *conclusion*.

Logic's inductive generalization argument

Here is a *general example of inductive generalization*:

Premise One Pavlovian conditioning caused dog Fido to salivate when a bell rings.

Premise Two Pavlovian conditioning caused dog Rover to salivate when a bell rings.

Premise Three Pavlovian conditioning caused dog Spot to salivate when a bell rings.

Premises Four+ [etc.]_____

Tentative Conclusion Pavlovian conditioning causes all dogs to salivate when a bell rings.

As scientists conduct more and more conditioning experiments and discover that all conditioned dogs salivate when a bell rings, it seems increasingly safe to inductively conclude that “Pavlovian conditioning causes all dogs to salivate when a bell rings.”

The conclusion will never be certain, however, because some day science may discover a dog that receives Pavlovian conditioning but doesn't salivate when a bell rings.

Here is a *legal example of inductive generalization*:

Premise One In published Appellate Case A, an ambiguous prenup term was held unenforceable.

Premise Two In published Appellate Case B, an ambiguous prenup term was held unenforceable.

Premise Three In published Appellate Case C, an ambiguous prenup term was held unenforceable.

Premises Four+ [etc.]_____

Tentative Conclusion All ambiguous prenup terms are unenforceable.

As more and more appellate cases rule ambiguous prenup terms unenforceable, it seems increasingly safe to inductively conclude that this legal principle exists: "all ambiguous prenup terms are unenforceable." The principle remains subject to appellate fine-tuning or statutory modification.

The process of generalizing a legal principle from a series of specific appellate rulings must be undertaken with care. The obiter dictum rule must be given special attention. A jurist who proceeds without caution may commit the logical "fallacy of hasty generalization."

You have expertly briefed the precedential cases and have confidently stated Wanda's conclusion that "all ambiguous prenup terms are unenforceable." By applying logic's inductive generalization argument to a line of appellate precedent, you have established the statement of law Wanda needs as the major premise of her deductive syllogism argument. Well done!

Logic's inductive analogy argument

Here is a *general example of inductive analogy*:

Premise One Pavlovian conditioning causes dog Fido to salivate when a bell rings.

Premise Two Cat Felix is similar to dog Fido by [Similarity A], [Similarity B] and [Similarity C].

Tentative Conclusion Pavlovian conditioning will cause cat Felix to salivate when a bell rings.

What similarities between Fido and Felix are "meaningful" for purposes of predicting their responses to Pavlovian conditioning? How compelling is the Fido-to-Felix analogy if the similarities between them are that Fido and Felix both:

- Possess saliva glands?
- Possess autonomic nervous systems?
- Get fleas?

Here is a *legal example of inductive analogy*:

Premise One A prenup term in Wanda's cited precedential case was found to be ambiguous.

Premise Two The prenup term in Wanda's cited precedential case is similar to the prenup term in the case at bench in these ways: [Similarity A], [Similarity B] and [Similarity C].

Tentative Conclusion The prenup term in the case at bench is ambiguous.

What similarities between the prenup term in Wanda's cited precedential case and the prenup term in the case at bench are "meaningful" for purposes of determining whether Wanda's cited precedential case is authoritative? How compelling is Wanda's analogy if the similarities between the two prenup terms are that they both:

- Failed to specifically identify the assets to which the fiancée's waiver attached?
- Used the demonstrative pronoun "this" with no antecedent?
- Misspelled the word "securities"?

The judicial officer's job is to weigh the similarities between Wanda's cited precedential case and the case at bench. It is not the mere numbers of similarities, but the importance of those similarities, that matters. If both prenup terms misspelled the word "securities," the bench officer will ignore that "similarity." The coincidental misspellings are no more meaningful than the fact that dogs and cats both get fleas.

As the California Supreme Court stated in *Harris v. Capital Growth Investors XIV* (1991) 52 Cal. 3d 1142, 1157:

...prior decisions are controlling only as to cases presenting the same factual situation....

As stated in *Southern Cal. Enterprises v. Walter & Co.* (1947) 78 Cal. App. 2d 750, 757:

An extract from an opinion must be read in the light of the subject there under discussion and with reference to the facts in that case, and rules applicable to the decision in which they appear cannot be repeated in exemplification of a theory different from that to which they were applied in the case wherein the opinion was rendered.

As stated in *Harris v. Superior Court (Smets)* (1992) 3 Cal. App. 4th 661, 666:

In an attempt to extract legal principles from an opinion that supports a particular point of view, we must not seize upon those facts, the pertinence of which goes only to the circumstances of the case but is not material to its holding. The *Palsgraf* rule, for example, is not limited to train stations.

You have expertly briefed Wanda's cited precedential case and have confidently stated Wanda's conclusion that "the prenup term at bench is ambiguous." By applying logic's inductive analogy argument to Wanda's cited precedential case, you have established the statement of fact Wanda needs as the minor premise of her deductive syllogism argument. Well done!

Wanda's deductive syllogism argument is now complete:

Major Premise All ambiguous prenup terms are unenforceable.
(statement of law)

Minor Premise *The prenup term at bench is ambiguous.*
(statement of fact)

Conclusion The prenup term at bench is unenforceable.
(ruling)

You win. Harold accepts Wanda's settlement offer. Wanda is fortunate to have been represented by a lawyer with your skill and mastery of the law's three logical arguments: deductive syllogism, inductive generalization, and inductive analogy. **FA**

Ronald S. Granberg is a principal with the Granberg Law Office in Salinas, California. He is Treasurer of the American Academy of Matrimonial Lawyers. Ron is also a Fellow of the International Academy of Matrimonial Lawyers, and the Education Chair of the California State Bar Family Law Executive Committee.