Legal Logic

2021 NorCal AAML
Trial Practicum

Presenter:
Ronald S. Granberg

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Bryan Garner

Trial Strategist, Author, Teacher

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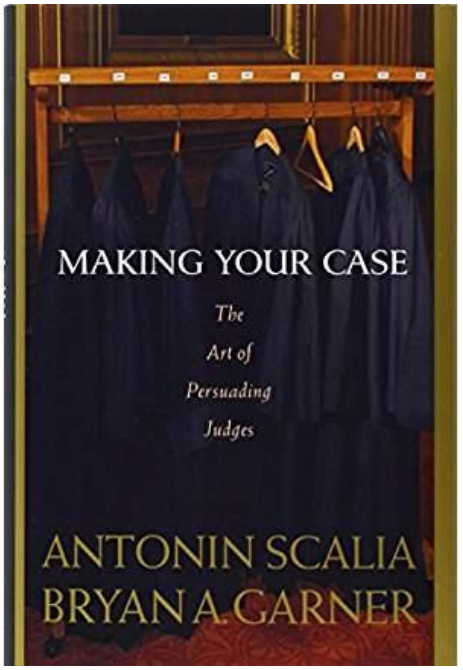

written in 2008

206 pages long

teaches
Trial Advocacy

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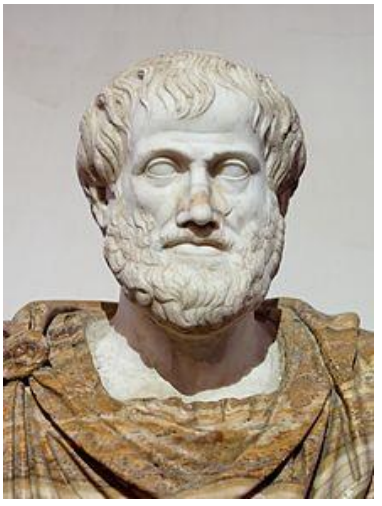
Aristotle



Trial Strategist, Author, Teacher

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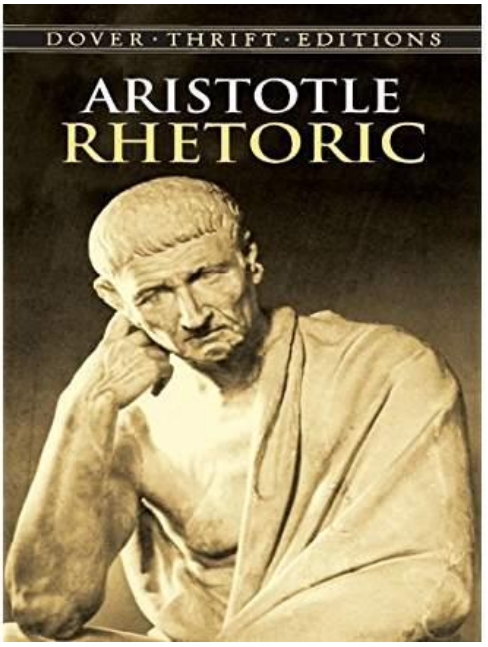

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Bryan Garner's

"Deep Issue"

6

Garner defines his "Deep Issue" as . . .

"[T]he ultimate, concrete question that a court needs to answer to decide a point your way. Deep refers to the deep structure of the case . . . The deep issue is the final question you pose when you can no longer usefully ask the follow-up question, 'And what does that turn on?' **The best form it can take is that of the syllogism**."

"To **put an argument in syllogistic form** is to strip it bare for logical inspection. We can then see where its weak points must lie, if it has any."

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Bryan Garner on Trial Proof

"Legal argument . . . has . . . [a] major premise: a text (constitution, statute . .), [and/or] precedent (case law . . .) . . . . The minor premise, meanwhile, is derived from the facts of the case. * * * [¶] There is much to be said for the proposition that **'legal reasoning revolves mainly around the establishment of the minor premise.**'"

TRIAL PROOF is your syllogism's MINOR PREMISE

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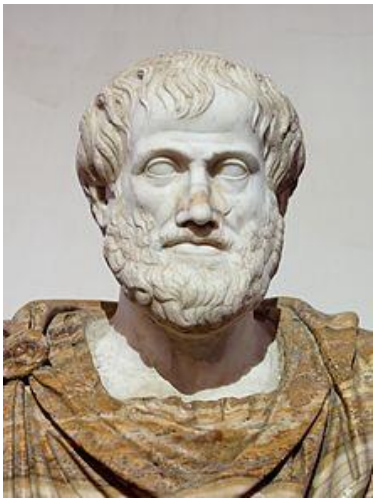
Bryan Garner

Aristotle



Deep Issue = Syllogism

9

Let‘s go to trial,

you and I.

10

You represent Wanda Basket in the divorce

Wanda dislikes Prenup Section 7 in which she waived her right, in event of divorce, to claim an interest in a yacht

You contend that Section 7 is **UNENFORCEABLE** on the ground that it was **FRAUDULENTLY OBTAINED**

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I represent Harold Basket in the divorce

Harold likes Prenup Section 7 in which Wanda waived her right, in event of divorce, to claim an interest in a yacht

I contend that Section 7 is **ENFORCEABLE** on the ground that it was **NOT FRAUDULENTLY OBTAINED**

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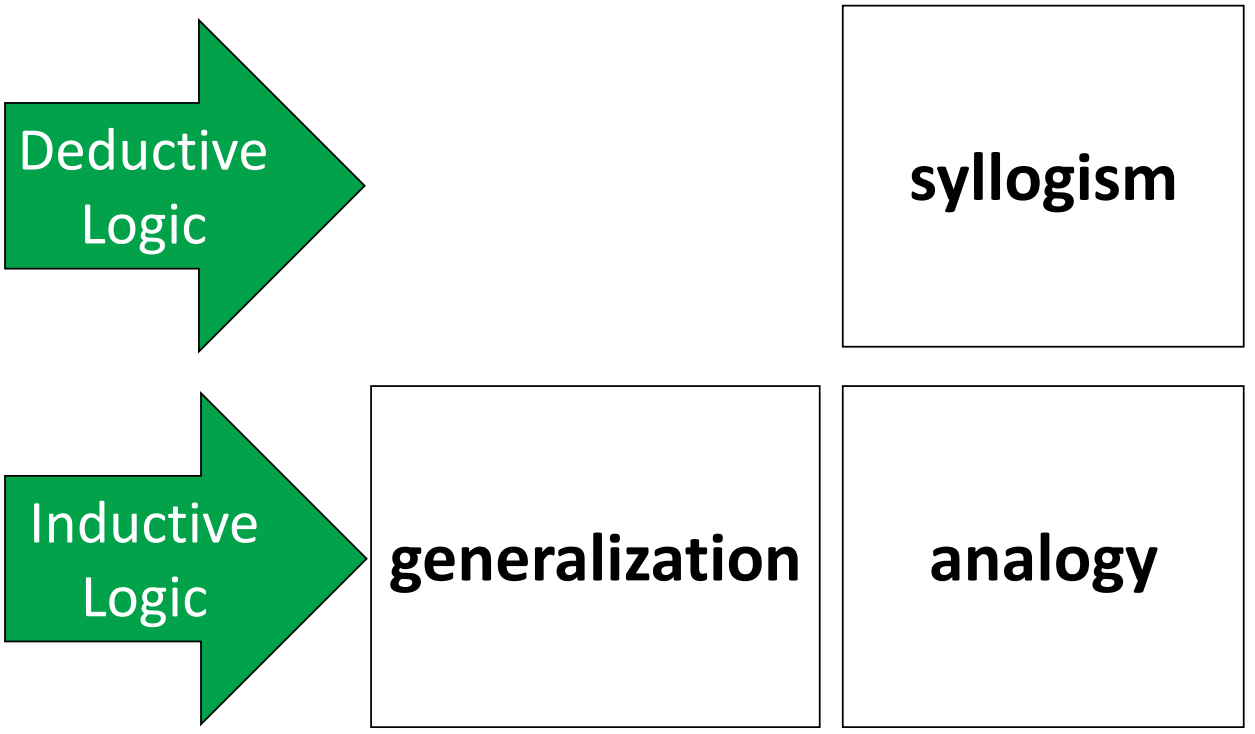
To properly structure your trial argumentation

study logic

13


Deductive Logic
syllogism
Inductive Logic
generalization
analogy

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Molière's *The Bourgeois Gentleman* (1670)

MONSIEUR JOURDAIN:
"Well, what do you know about that!
These forty years now I've been
speaking in prose without knowing it!"

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Logical arguments use

two types of **statements**:

1. **DEFINITIONAL** statements, and
2. **EMPIRICAL** statements.

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DEFINITIONAL statement

true by **DEFINITION**

EMPIRICAL statement

requires **PROOF**

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A **DEFINITIONAL STATEMENT**
is always true –
it is true by **definition**

General Example:
"A mammal is warm-blooded"

18

The **definitional statement** "a mammal is warm-blooded" is certain and can never be disproven, not even if a mammal-like, cold-blooded animal were discovered living on a remote island.

No matter how mammal-like the animal looks, it isn't a mammal unless it is warm-blooded. **It's the law.**

Being warm-blooded is part of **WHAT IT MEANS** to be a mammal

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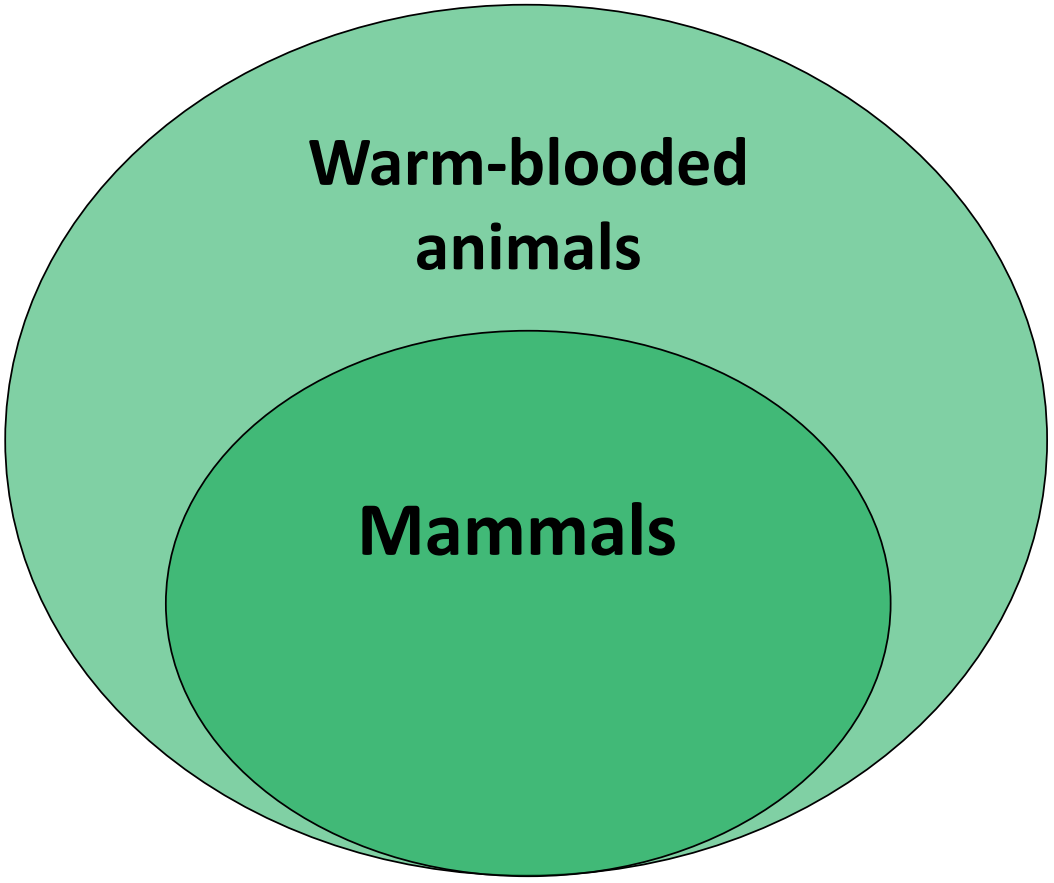

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A **DEFINITIONAL STATEMENT**
is always true –
it is true by **definition**

Legal Example:
"A fraudulently-obtained prenup provision is unenforceable"

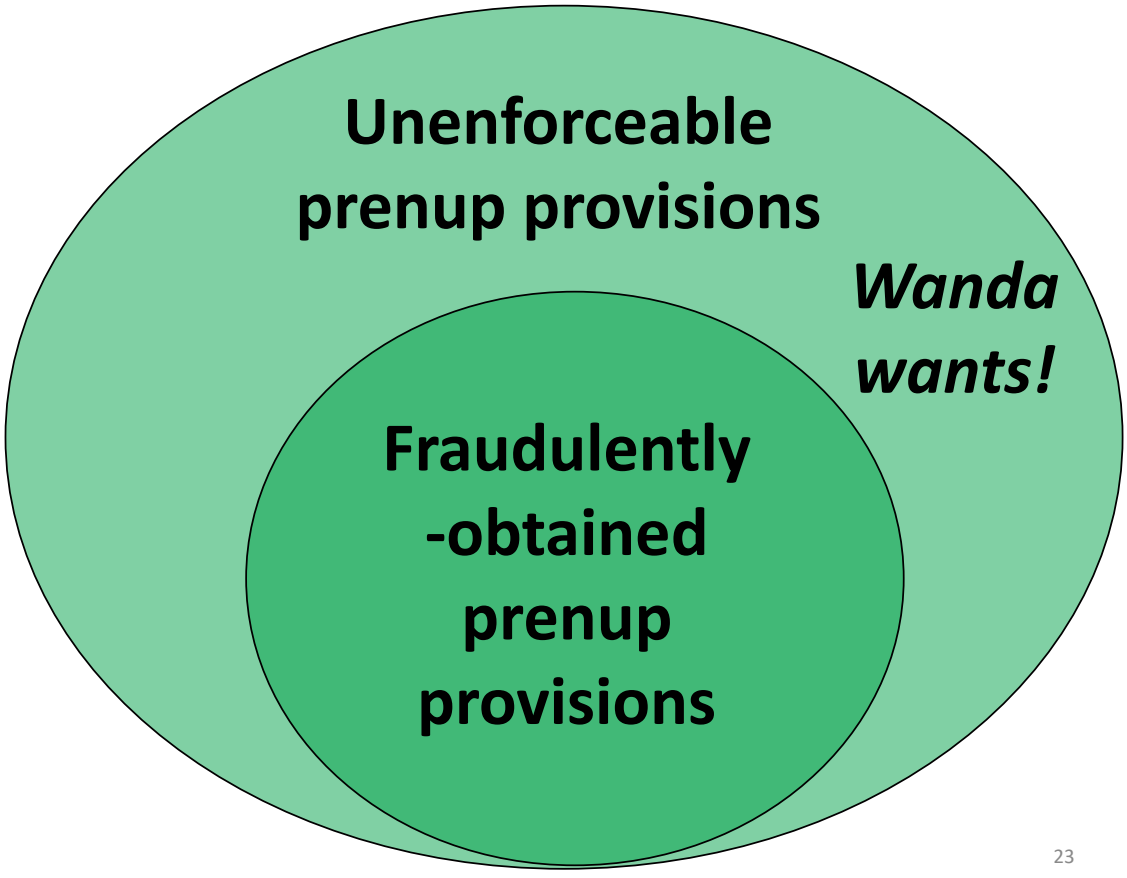
21

The **definitional statement** "a fraudulently-obtained prenup provision is unenforceable" is certain, because it embodies an established, **"definitive"** legal principle.

Once a court rules that a prenup provision was fraudulently obtained, the provision is necessarily unenforceable. **It's the law.**

Being unenforceable is part of **WHAT IT MEANS** to have been fraudulently obtained

22


Unenforceable prenup provisions
Wanda wants!
Fraudulently -obtained prenup provisions

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AN **EMPIRICAL STATEMENT**
may or may not be true –
it **requires proof**.

General Example:
"A Pavlovian-conditioned dog salivates when a bell rings"

24

As scientists conduct more 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 salivates 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.

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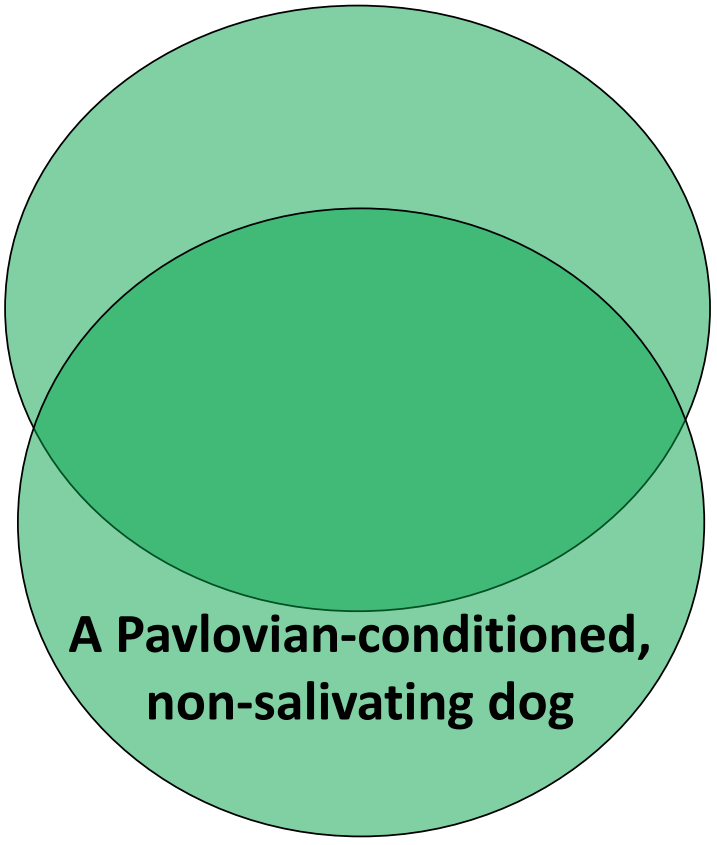

does this dog exist?

26

26

AN **EMPIRICAL STATEMENT**
may or may not be true –
it **requires proof**.

Legal Example:
"Section 7 was
fraudulently obtained"

27

Wanda's contention that Section 7 was fraudulently obtained requires **empirical proof**.

Our bifurcated trial over Section 7 resembles a **scientific experiment**, the object of which is to determine whether Section 7 was fraudulently obtained.

Wanda must carry the **burden of proof**.

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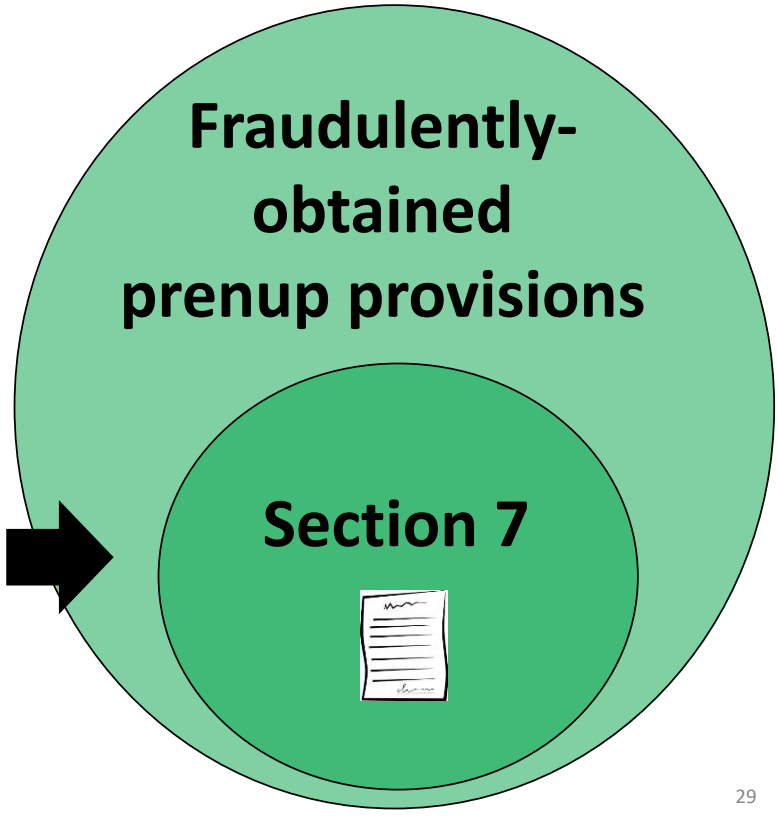
Wanda's contention



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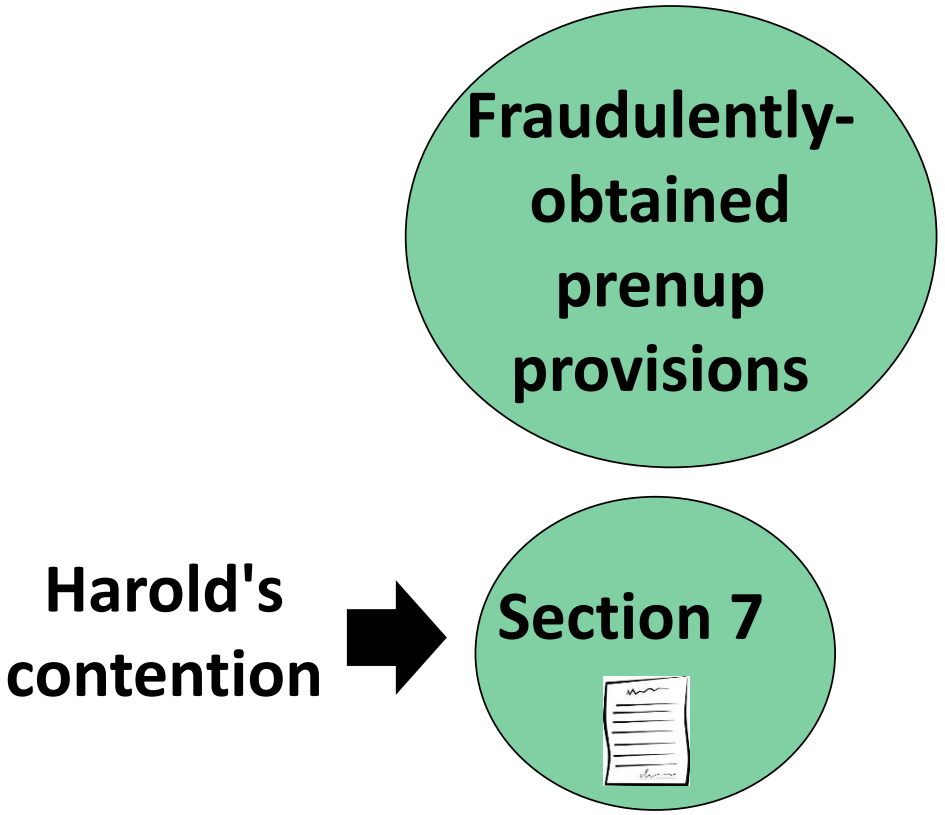
Fraudulently-obtained prenup provisions
Harold's contention
Section 7

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A **DEFINITIONAL** statement is always certain

mathematics is based on

definitional statements

An **EMPIRICAL** statement might be probable, but is never certain

science is based on

empirical statements

law is based on

definitional & **empirical** statements

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A **DEFINITIONAL** statement	Is a statement of **LAW**
An **EMPIRICAL** statement	Is a statement of **FACT**

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A **DEFINITIONAL** trial court error	Is an error of **LAW**
An **EMPIRICAL** trial court error	Is an error of **FACT**

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A **DEFINITIONAL** trial court error

DE NOVO appellate standard of review

An **EMPIRICAL** trial court error

SUBSTANTIAL EVIDENCE appellate standard of review

Advanced peak at syllogism:
Major *premise =* ***Definitional*** *statement*
Minor *premise =* ***Empirical*** *statement*

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Syllogism: Legal Example

Major Premise	A fraudulently-obtained prenup provision is unenforceable
Minor Premise	Section 7 was <u>fraudulently obtained</u>
Conclusion	Section 7 is unenforceable

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Syllogism: Legal Example

Major Premise	A fraudulently-obtained prenup provision is unenforceable **LAW**
Minor Premise	Section 7 was <u>fraudulently obtained</u>
Conclusion	Section 7 is unenforceable

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Syllogism: Legal Example

Major Premise	A fraudulently-obtained prenup provision is unenforceable	**LAW**
Minor Premise	Section 7 was fraudulently obtained	**FACT**
Conclusion	Section 7 is unenforceable	

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Syllogism: Legal Example

Major Premise	A fraudulently-obtained prenup provision is unenforceable	**LAW**
Minor Premise	Section 7 was fraudulently obtained	**FACT**
Conclusion	Section 7 is unenforceable	**RULING**

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Two Types of Statements

Definitional Statement	A fraudulently-obtained prenup provision is unenforceable	**LAW**
Empirical Statement	Section 7 was fraudulently obtained	**FACT**
Conclusion	Section 7 is unenforceable	**RULING**

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Two Appellate Standards of Review

De Novo	A fraudulently-obtained prenup provision is unenforceable	**LAW**
Substantial Evidence	Section 7 was fraudulently obtained	**FACT**
Conclusion	Section 7 is unenforceable	**RULING**

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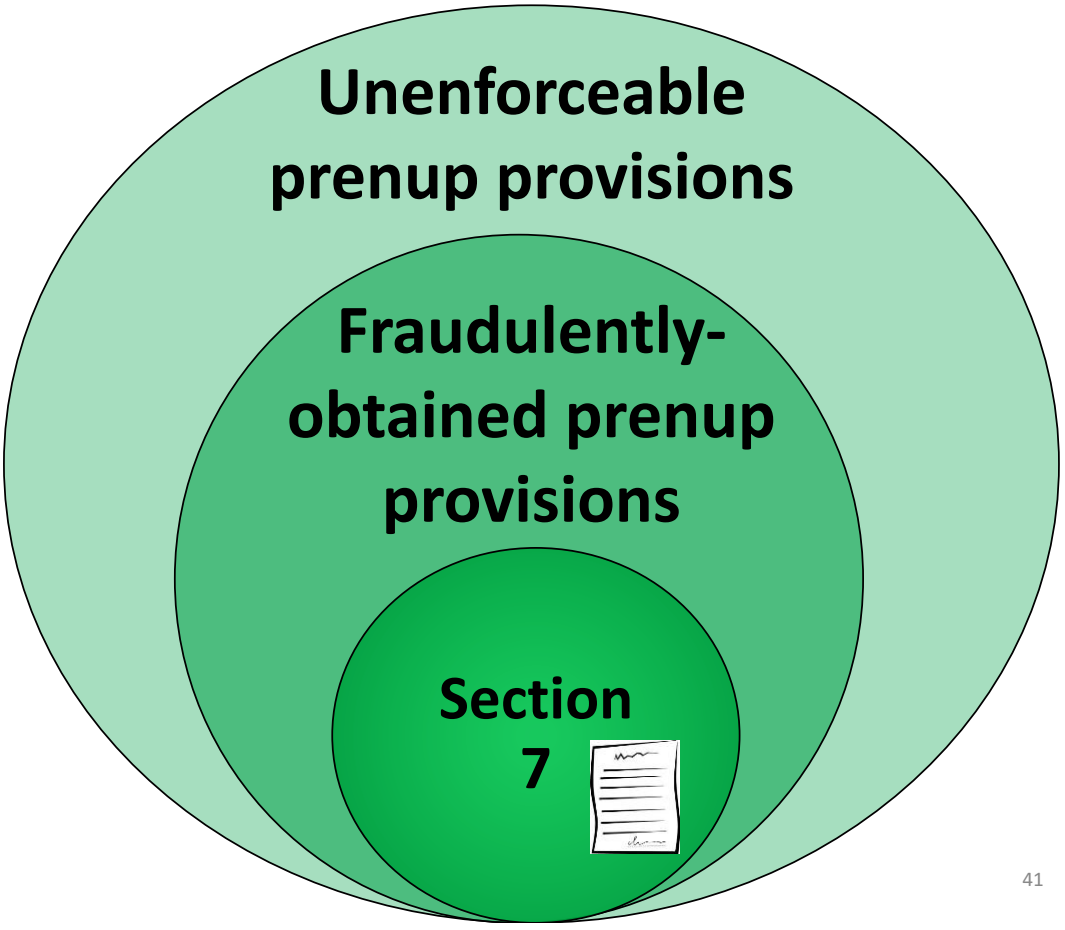
Unenforceable prenup provisions
Fraudulently-obtained prenup provisions
Section 7

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LOGIC ARGUMENTS
are either:

1. **DEDUCTIVE,** or
2. **INDUCTIVE.**

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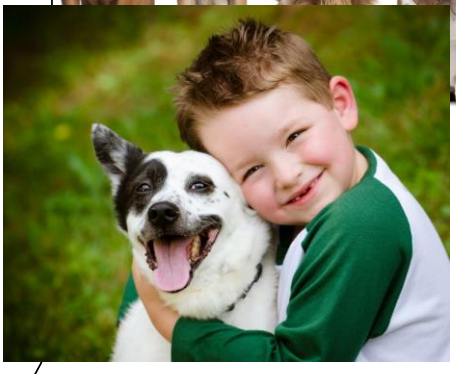
Deductive Arguments vs. Inductive Arguments

- A **deductive** argument always begins with a **general proposition** (e.g., "all dogs")
- An **inductive** argument always begins with a **particular proposition** (e.g., "this dog")



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The Two Types of Deductive Arguments

A **deductive** argument (beginning with a **general** proposition) either:

- ends with a **general** proposition *(rarely used)*, or
- ends with a **particular** proposition ("**syllogism**")

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The Two Types of Inductive Arguments

An **inductive** argument (beginning with a **particular** proposition) either:

- ends with a **general** proposition ("**generalization**"), or
- ends with a **particular** proposition ("**analogy**")

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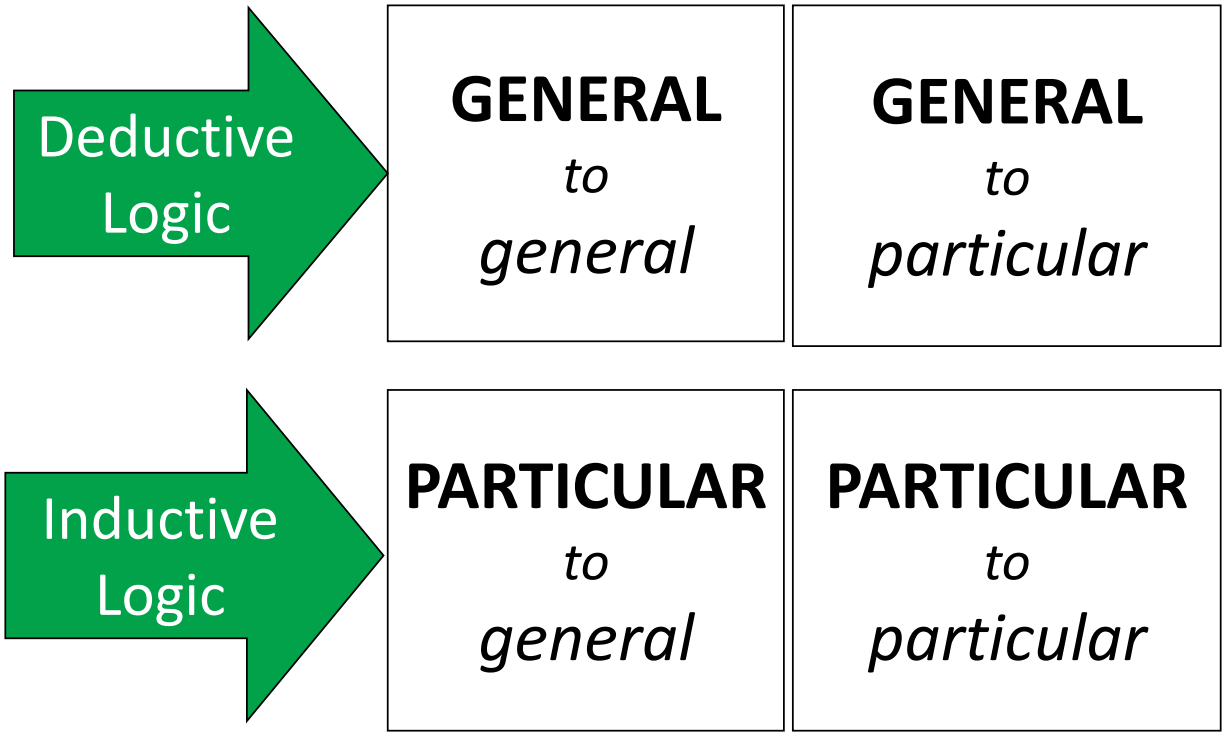
Deductive Logic
GENERAL to general
GENERAL to particular
Inductive Logic
PARTICULAR to general
PARTICULAR to particular

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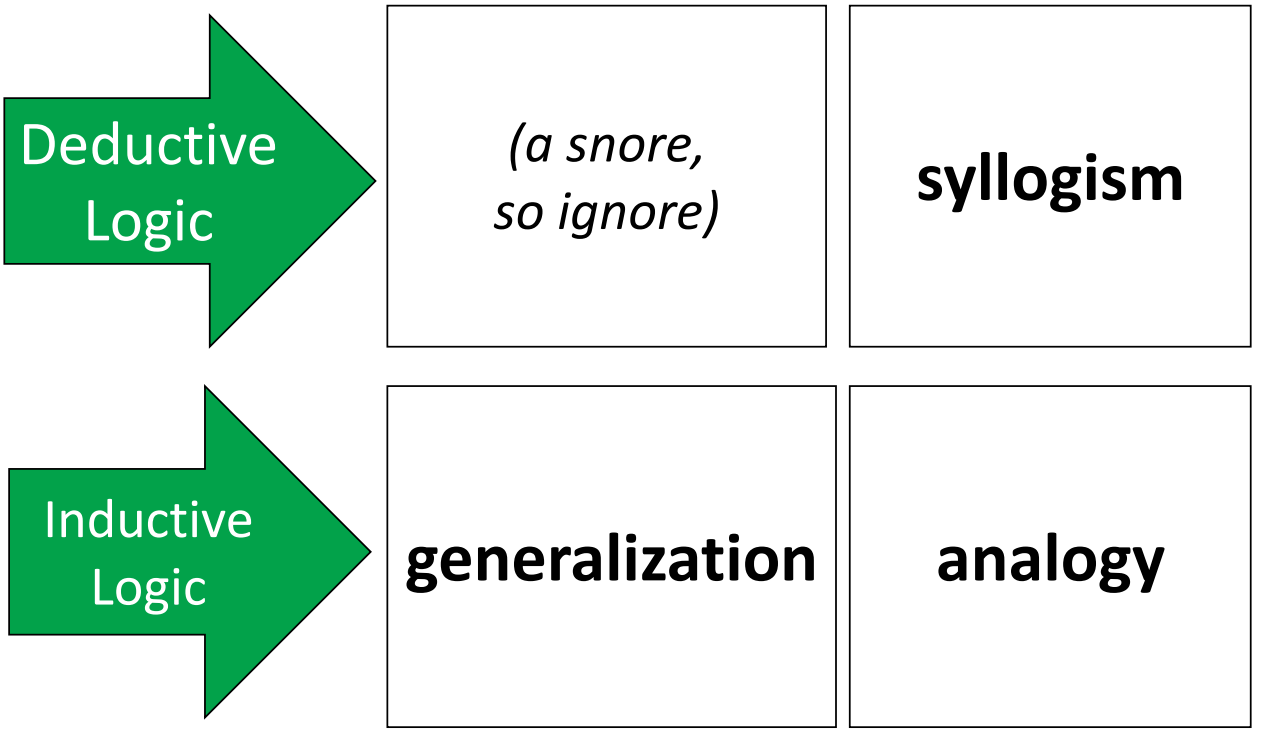
Deductive Logic
(a snore, so ignore)
syllogism
Inductive Logic
generalization
analogy

47

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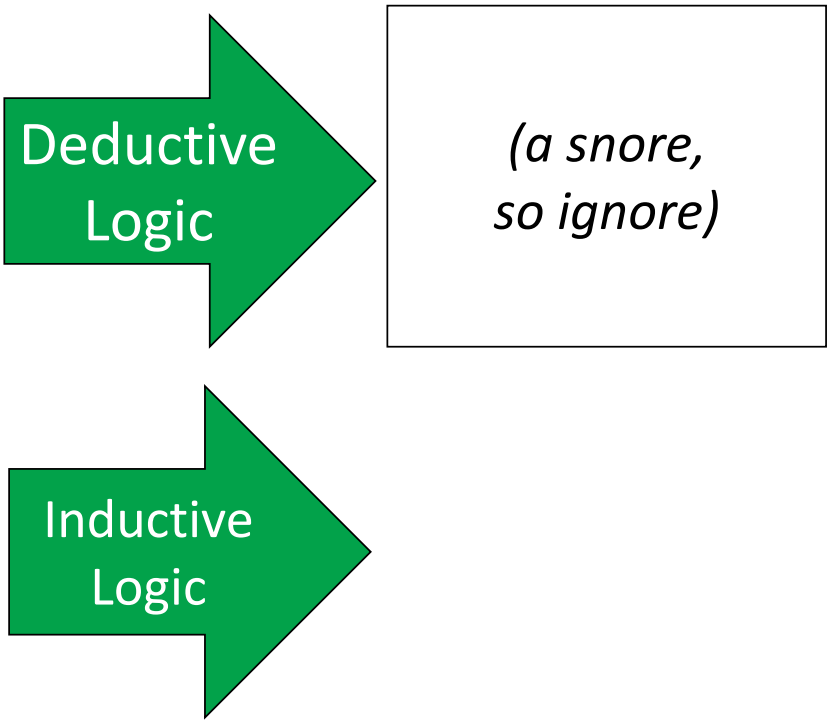

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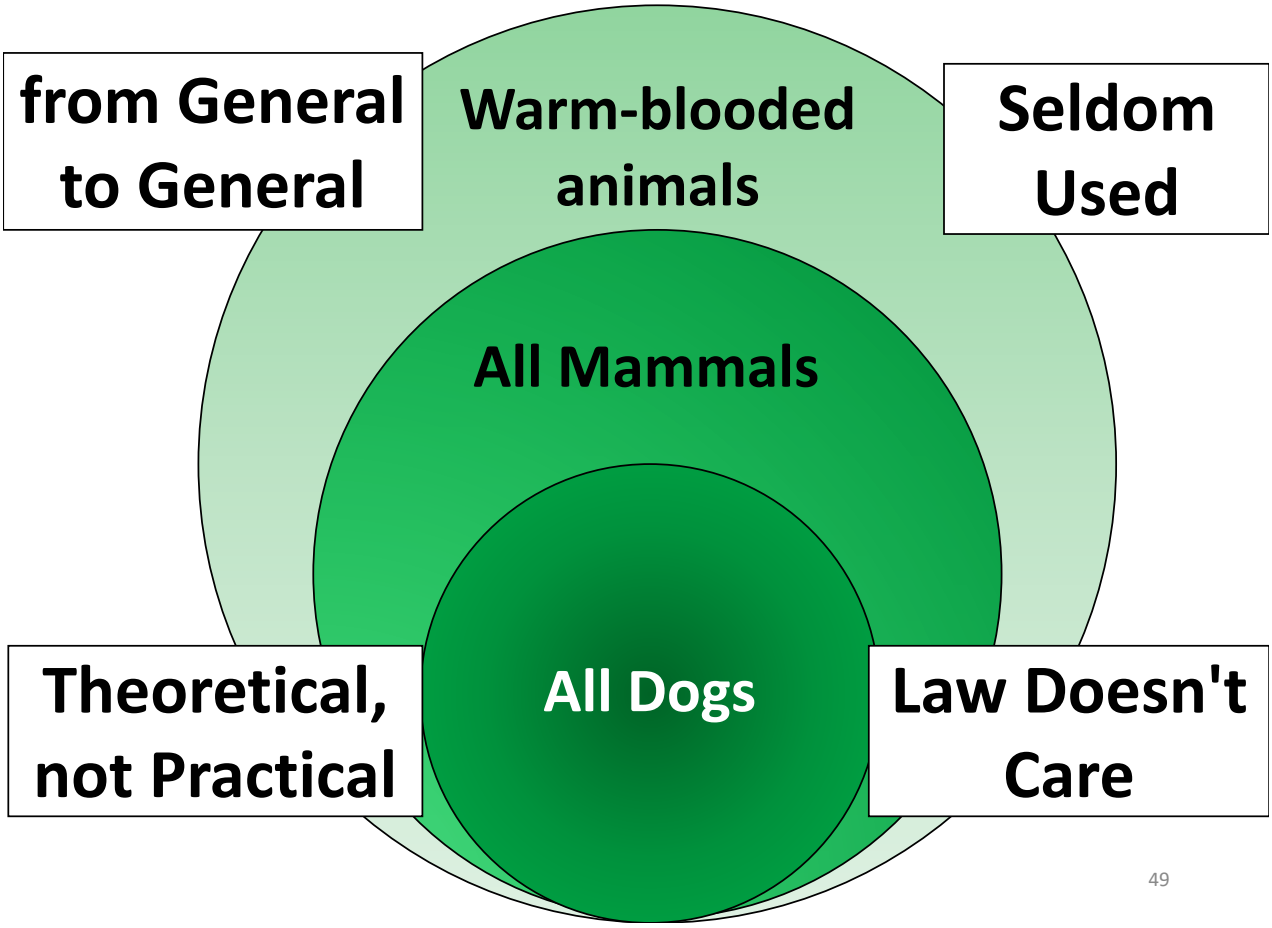
from General to General
Warm-blooded animals
Seldom Used
All Mammals
All Dogs
Theoretical, not Practical
Law Doesn't Care
49

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Law has **little interest** in:

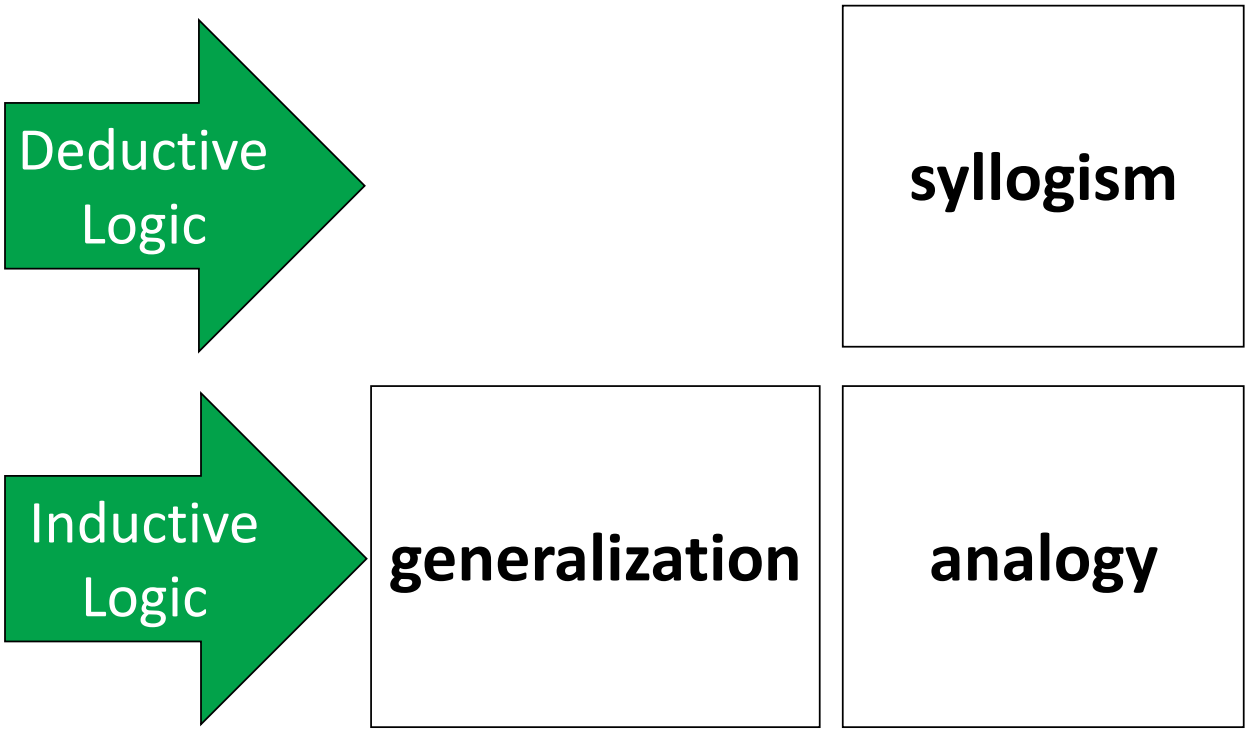
- All conceivable robbers,
- All conceivable tortfeasors, or
- All conceivable fathers.

Law has **great interest** in:

- Is X a robber?
- Is Y a tortfeasor?
- Is Z a father?

Law *distinguishes* and *differentiates*

50


Deductive Logic
syllogism
Inductive Logic
generalization
analogy

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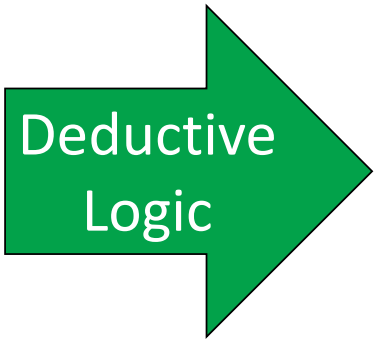
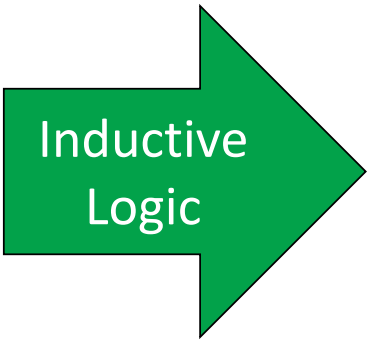
51



SYLLOGISM
applies General legal principles to a Particular Section 7



GENERALIZATION
decides whether a line of Particular appellate rulings has created a General legal principle

ANALOGY
decides whether a Particular precedent applies to a Particular Section 7

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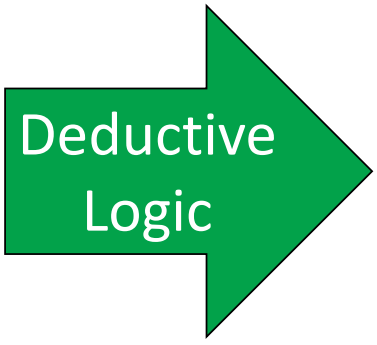
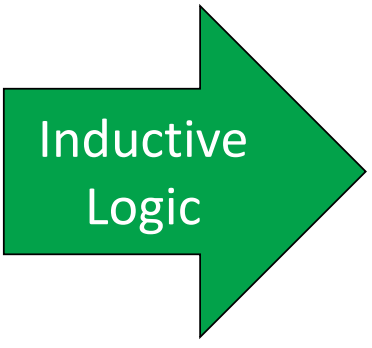


SYLLOGISM
applies General legal principles to a Particular Section 7



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Syllogism: Legal Example

Major Premise	A fraudulently-obtained prenup provision is unenforceable	**LAW**
Minor Premise	Section 7 was fraudulently obtained	**FACT**
Conclusion	Section 7 is unenforceable	**RULING**

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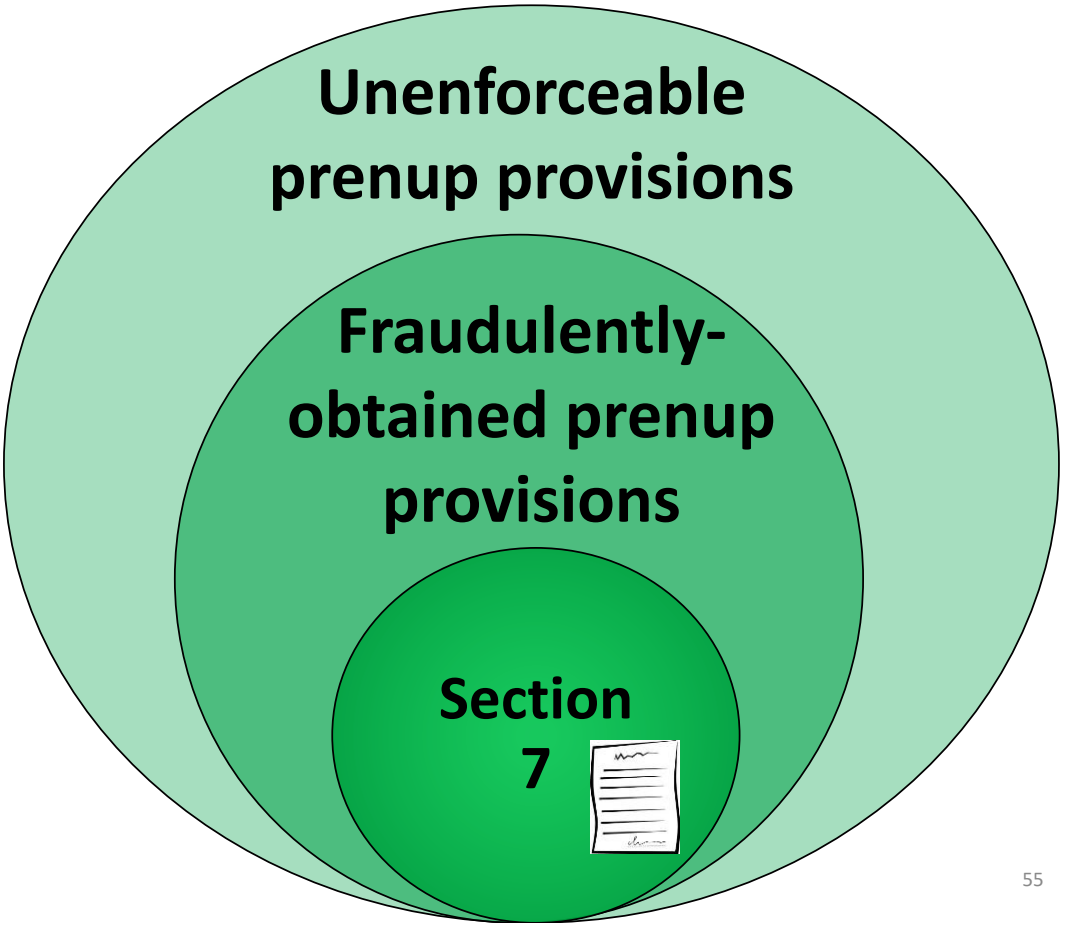
Unenforceable prenup provisions
Fraudulently-obtained prenup provisions
Section 7

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

Issue	is the syllogism's ***subject matter***
Rule	is the syllogism's ***major premise*** **(LAW)**
Analysis	applies the syllogism's ***major premise*** **(LAW)** to its ***minor premise*** **(FACT)**
Conclusion	is the syllogism's ***conclusion*** **(RULING)**

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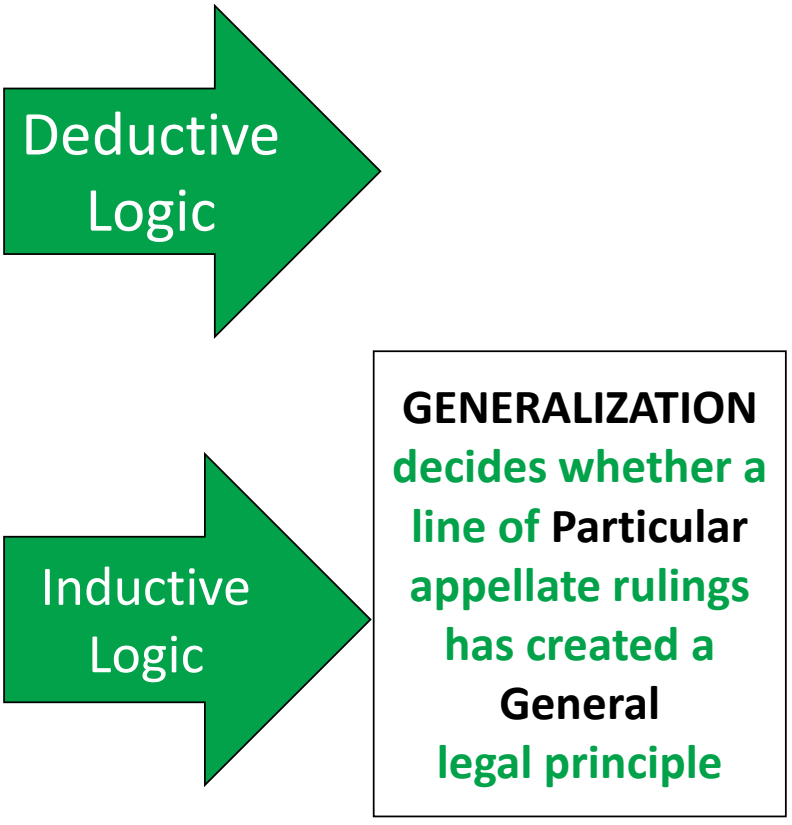
Deductive Logic
Inductive Logic
GENERALIZATION
decides whether a line of Particular appellate rulings has created a General legal principle

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Generalization: General Example

Pavlovian-conditioned **Dog Snoopy** salivates when a bell rings.

Pavlovian-conditioned **Dog *Lassie*** salivates when a bell rings.

Pavlovian-conditioned **Dog *Scooby-Do*** salivates when a bell rings.

(+ 4,300 other dogs)

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Generalization: General Example

Pavlovian-conditioned **Dog *Snoopy***
saliva

Pavlov
saliva

Pavlov
saliva

(+ 4,300 other dogs)

Tentative conclusion:
ALL Pavlovian-conditioned dogs salivate when a bell rings

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Generalization: Legal Example

In published **Appellate Case A**,
a fraudulently-obtained prenup
provision was held unenforceable.

In published **Appellate Case B**,
a fraudulently-obtained prenup
provision was held unenforceable.

In published **Appellate Case C**,
a fraudulently-obtained prenup
provision was held unenforceable.

(+ 43 other published contract cases)

60

60

Generalization: Legal Example

In published **Appellate Case A**,
a fraudulently-obtained prenup
prov

In pu
a frau
provi

In pu
a fraudulently-obtained prenup
provision was held unenforceable.

(+ 43 other published contract cases)

Tentative conclusion:
ALL fraudulently-obtained prenup provisions are unenforceable

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DANGER AHEAD!

DANGER AHEAD!

The jurist who proceeds without caution may commit the logical **fallacy of hasty generalization**.

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DANGER AHEAD!

DANGER AHEAD!

The jurist must differentiate between the two kinds of statements an appellate court makes: **ratio decidendi** and **obiter dictum**

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Ratio decidendi means "rationale for the decision." Such an appellate court statement is **mandatory authority**.

Obiter dictum (“obiter” = “incidentally”; “dictum” = “said”) means “said in passing." Such an appellate court statement is merely **persuasive authority**.

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Guiding principle of Common Law System:

Persons who have behaved similarly should receive similar treatment under law.

Practicality of Common Law System:

Appellate justices provide guidance to trial judges, litigating attorneys, and the public regarding the proper application of legal principles to particular factual settings.

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A dictum statement not binding:

- An appellate court's dual functions are **dispute resolving** and **lawmaking**.
- The court's lawmaking **power** derives from its dispute-resolving **duty**.
- A dictum statement is unnecessary to the court's dispute-resolving duty.
- Therefore, a dictum statement does not make law.

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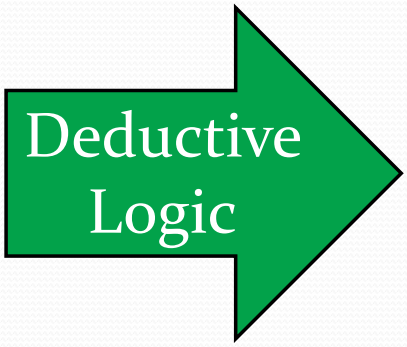

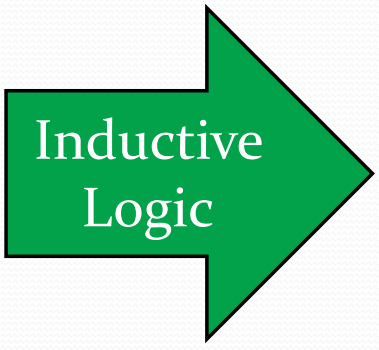

ANALOGY
decides whether a Particular precedent applies to a Particular Section 7

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Analogy: General Example

Pavlovian-conditioned **Dog Fido** salivates when a bell rings.
Cat Felix is similar to **Dog Fido** in these ways:
[Similarity A]
[Similarity B]
[Similarity C]

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Analogy: General Example

Pavlovian-conditioned **Dog Fido**
saliva
Cat F n
in th
[Simi
[Simi
[Similarity C]

Tentative conclusion:
Pavlovian-conditioned **Cat Felix** will salivate when a bell rings

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What similarities between **Fido** and **Felix** are "meaningful" for purposes of predicting Felix's response to Pavlovian conditioning?
How compelling is the **Fido-to-Felix analogy** if the similarities between the animals are that they both:

A. Possess saliva glands?
B. Possess autonomic nervous systems?
C. Get fleas?

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Analogy: Legal Example

The fiancée's representations in **Wanda's Precedent Case** were found to be fraudulent. The fiancée's representations in **Wanda's Precedent Case** are similar **Harold's representations** in these ways:
[Similarity A]
[Similarity B]
[Similarity C]

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Analogy: Legal Example

The fiancée's representations in **Wanda's Precedent Case** were found to be fraudulent,
The
Pre **Case**
rep
[Sin
[Sin
[Similarity C]

Wanda's asserted conclusion: Harold's representations were fraudulent, and therefore Section 7 was fraudulently obtained

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What similarities between the **fiancée's misrepresentations in Wanda's Precedent Case** and **Harold's misrepresentations** are important for purposes of determining whether Wanda's Precedent Case comprises mandatory authority? How compelling is the **analogy** if both fiancées:

A. Misrepresented the **value of a yacht** (which, in both cases, turned out to be far more valuable than the amount represented)?
B. Misrepresented the **ownership of a yacht** (in both cases, the fiancée turned out to have owned 100%, not the 10% as represented)?
C. Misrepresented the **color of the boathouse** in which a yacht was stored?

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Obviously, a judge's job is to WEIGH the similarities.

- It is not the mere numbers of similarities, but the **importance of the similarities**, that matters.
- If both fiancées misrepresented the color of the boathouse, the judge will ignore that "similarity."
- The colors of the respective boathouses are no more important than the fact that dogs and cats both get fleas.

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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** . . . ."

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Harris v. Superior Court (Smets) (1992) 3 Cal.App.4th 661, 666-667:

"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."

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Analogy

Wanda's Precedential Case	Basket Case	Harold's Precedential Case
Fact A	Fact A	Fact A
Fact B	Fact B	Fact B
Fact C	Fact C	Fact C

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Trial Proof Map

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Analogy

Wanda's Precedential Case	Basket Case
Fact A	Fact A
Fact B	Fact B
Fact C	Fact C

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Syllogism

Major Premise	A fraudulently-obtained prenup provision is unenforceable	**LAW**
Minor Premise	Section 7 was fraudulently obtained	**FACT**
Conclusion	Section 7 is unenforceable	**RULING**

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