



ORIENTATION HOMEWORK ASSIGNMENT

Welcome to Santa Clara Law! This packet of materials introduces you to some of the basic ideas behind legal education and includes your assignments for the sessions that will meet during Orientation. Our goal for Orientation is to help you get your bearings so that the first few weeks of the semester are a bit less overwhelming. Law school is an incredibly challenging undertaking that will require you to work harder and think more deeply than you probably ever have before. We hope to ease your transition into this new academic environment, and look forward to supporting and advising you along the way.

Lawyers and the Legal System

If you went to high school and/or college in the United States¹, you probably have some background knowledge on the structure of our government, how our laws are made, and what the court system does. These are foundational concepts to the study of law, so we provide here links to some general articles that introduce (or reintroduce) this material. Please review each prior to Orientation.

- U.S. Federal Government
<https://www.usa.gov/branches-of-government>
- Introduction to the American Legal System
<http://www.lexisnexis.com/en-us/lawschool/pre-law/intro-to-american-legal-system.page>
A LexisNexis account is not required to access this page.

As Santa Clara is located in California and most of our graduates go on to practice in this state, some portion of our curriculum focuses on the specifics of California law and legal practice.

- Fact Sheet: California Judicial Branch
http://www.courts.ca.gov/documents/California_Judicial_Branch.pdf

¹ If you weren't educated in the United States, it may be helpful to do some additional reading in this area. A book we recommend is *Constitutional Law: Principles and Practice* by Joanne Banker Hames and Yvonne Ekern.

- State Bar of California: Admissions Requirements
<http://www.calbar.ca.gov/Admissions/Requirements>
You'll notice that the first requirement is that you register as a law student with the State Bar. We encourage you to do that by the beginning of the school year.

Finally, you are entering into one of the world's most respected professions. Lawyers serve a unique role in our society, and have important professional obligations that come along with that position. Lawyers are "officers of the court," serving not only the interests of our clients, but also those of the entire legal system. As law students, beginning to understand and develop that professional identity is essential.

- Santa Clara County Bar Association Code of Professionalism
<http://www.sccba.com/associations/12315/files/SCCBACode%2007.final.pdf>
Read Sections 1, 2, 6, 14, 16 through 19, and 22.

TOOLS FOR ACADEMIC SUCCESS **PROFESSOR DEVIN KINYON²**

One very important idea for new law students to embrace is that you need to develop a new approach to learning in law school if you hope to be successful. Simply put, law school isn't like anything else you've experienced, so the strategies you've used in the past for college will have to change for you to succeed.

Professor Kinyon will begin your exposure to the various tools, techniques, and strategies that successful law students employ at your first academic session. Our goal is to show you a variety of ideas, and empower you to do those things that align with your learning preferences, background, and needs.

At this session we will discuss a concept called Self-Regulated Learning, an idea employed by the very best students in all disciplines to get the most out of their learning experience. Please read the following excerpts from *Expert Learning for Law Students*, Second Edition by Michael Hunter Schwartz.

² Professor Kinyon teaches *Advanced Legal Writing: the Bar Exam, Community Property, Legal Analysis, and Property*; and as a part of the faculty in the Office of Academic & Bar Success, oversees academic support and helps prepare students for the California Bar Exam.

Chapter 4

The Self-Regulated Learning (SRL) Cycle

Self-Regulated Learning, as explained above, is a cycle in which a student actively controls her behavior, motivation and thinking process as she is engaging in academic tasks. Professor Barry Zimmerman, one of the leading authors in the field, explains:

Self-regulated learners view academic learning as something they do for themselves rather than as something that is done to or for them. They believe academic learning is a proactive activity, requiring self-initiated motivational and behavioral processes.... Unlike their less skilled peers, self-regulated learners control their own learning experiences through processes such as goal-setting, self-monitoring, and strategic thinking.¹

Actually, those who teach for a living have encountered students who possess excellent self-regulation skills:

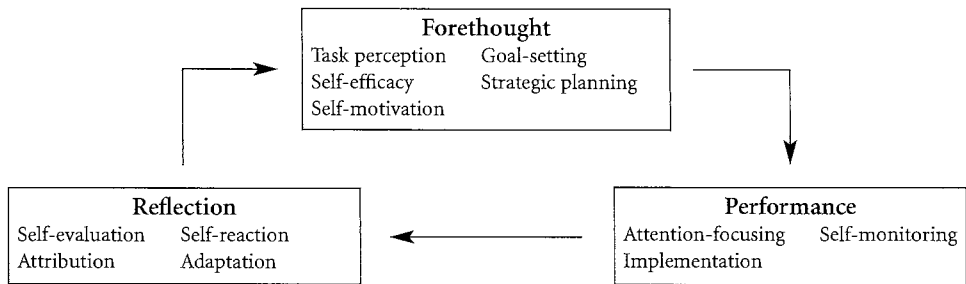
Teachers know self-regulated academic learners when they see them—these students are interested in the subject matter; well-prepared; and ready with comments, questions, ideas, and insights; they are problem finders and problem solvers, unafraid to fail or to admit they do not understand, driven to rectify failure and to construct understanding.²

The SRL cycle involves three phases: *forethought*, *performance* and *reflection*, each of which has multiple components. In the *forethought* phase, you plan how you will go about learning. In the *performance* phase, you implement your plan while monitoring whether it is working. Finally, in the *reflection* phase, you evaluate your learning results and use those results to plan how you will learn better the next time you are faced with a similar learning task. Figure 2 on the next page depicts the cycle and all the components of the three phases; each of the phases is detailed below.

1. Barry J. Zimmerman, *Developing Self-Fulfilling Cycles of Academic Regulation: An Analysis of Exemplary Instructional Models* in SELF-REGULATED LEARNING: FROM TEACHING TO SELF-REFLECTIVE PRACTICE 1, (1998).

2. Barry J. Zimmerman & Andrew S. Paulsen, *Self-Monitoring During Collegiate Studying: An Invaluable Tool for Academic Self-Regulation* in NEW DIRECTIONS IN COLLEGE TEACHING AND LEARNING: UNDERSTANDING SELF-REGULATED LEARNING 13 (No. 65:1995).

Figure 2: The Self-Regulated Learning Cycle



The Forethought Phase

The forethought phase consists of all the thinking the student does before she starts engaging in a learning task. It is the preparation phase, although the term “preparation” misleadingly makes it sound as if these activities are not as important or as demanding as the tasks in which the student will later engage. In fact, each of the activities involved in the forethought phase has been shown independently to improve a student’s educational results. In other words, students who adopt even one forethought phase activity obtain higher grades than those who do not.

The forethought phase includes five activities or sub-phases:

1. Perceiving the task,
2. Classifying the task,
3. Invoking intrinsic interest and self-efficacy,
4. Goal setting, and
5. Planning strategies.

As the numbering implies, expert self-regulated learners typically engage in these activities in a particular sequence, although the sequence is not exactly linear in the sense that particular learners combine activities (particularly as they become skilled at them), develop automaticity in performing the activities, and alter the order to their particular preferences. These changes in ordering and use occur because expert learners alter their approaches to learning based on their particular learning needs and preferences and based on their reflections on their learning, both while the learning task is in progress and after it has been completed. In other words, expert learners see each learning task as an opportunity to reflect upon and sharpen their learning skills. These activities are introduced below and explained in depth in Chapter 5.

At the outset of a learning experience, all learners, expert and otherwise, perceive the task. In other words, they recognize that a task has been required of them. For example, before you started reading these materials, you noticed them in a syllabus (or at least in the table of contents of this book). Expert self-regulated learners then **classify the learning task**, noting the type(s) of skills required by the task (e.g., reading for understanding, memorizing, problem-solving, writing) and the subject area of the task (e.g., history, geology). An expert learner, therefore, would classify the task in which you are

engaged right now as a reading comprehension task (reading to learn the concepts described in this chapter) and classify the subject area as “self-regulated learning” or “expert learning” or, more generally, “educational psychology.”

Having identified and classified the learning task, the learner reacts to it. Novice learners focus only on whether they find the task intrinsically interesting. Expert self-regulated learners consciously **invoke intrinsic interest** by determining the relevance of the task, both to the course and to their reasons for undertaking the particular educational endeavor in which they are engaged (e.g., becoming a lawyer). An expert learner would regard reading this book as interesting simply because learning interests them or because of the relevance of self-regulated learning to their success in law school.

At about the same time, expert learners also assess their **self-efficacy** for accomplishing the task. In an educational setting, self-efficacy refers to students' beliefs about whether they have the ability to successfully master an academic task. Self-efficacy has been proven to be a particularly powerful predictor of educational success.³ Expert learners consciously *invoke* self-efficacy by recalling past successes with similar tasks. In the context of reading this book, an expert learner would recall other courses in which they had to learn from a text, such as history, social science or even some hard science courses. Self-efficacy is a product of the intersection of students' past educational experiences, their perception of the degree of difficulty of the task and their perception of the adequacy of their development of the skill(s) required by the task. Thus, an expert learner would consider how well prepared she feels to learn about self-regulated learning, given its only modest difficulty, and would weigh how skilled she is in learning from texts.

The self-regulating learner then sets a goal, a specific outcome she desires, for the task. Expert self-regulated learners generally set **mastery learning goals** that, most commonly, focus on learning the material as well as possible rather than solely on the grade implications of learning the material. The expert learners set goals that have specific standards by which the students will measure their mastery, that are short term and that are moderately difficult to achieve. An appropriate goal for the material in this chapter might be: “By the first day of class, I will be able to list the three phases of the self-regulated learning cycle and explain what each generally involves without error, and be able to list the sub-tasks of each phase and explain generally what each sub-task requires with 80% accuracy.” This goal is appropriate because it is demanding but not too hard, because it is a short-term goal and because it is concrete.

The final and crucial step of the forethought phase involves devising and tailoring a strategic approach to achieving the goal. The student, having classified the task according to what it demands and its subject area, engages in **strategy selection** by identifying possible strategies most appropriate to her goals, reviewing her own learning preferences and making predictions of outcomes based on the various strategies she is considering and then by choosing the learning strategy(ies) she will be employing. Learning strategies are so many, so varied and so task dependent that explaining all of them will require the entire second half of this book. At this stage of your study, you only need to know that learning strategies are task-specific (different depending on the task), are

3. Anastasia S. Hagan & Claire Ellen Weinstein, *Achievement Goals, Self-Regulated Learning, and the Role of the Classroom Context* in *NEW DIRECTIONS IN COLLEGE TEACHING AND LEARNING: UNDERSTANDING SELF-REGULATED LEARNING* 45 (No. 65:1995).

many in number (you often have several choices for each type of learning), and are learner-specific (dependent on your learning preferences, personality type and learning goals).

Strategy selection also includes identifying motivational strategies (the thoughts that will help you stay focused on the task as you progress through it, such as your interest in the task and reasons for mastering it and your past successes with similar tasks) and environmental strategies (e.g., removing distractions, forming study groups).

The Performance Phase

The performance phase is the implementation phase of the cycle. It involves not only the learning activities themselves, but also the mental processes that improve or interfere with the students' efforts to concentrate and otherwise implement the learning activities in which they have decided to engage. There are three tasks that make up this phase:

1. **Attention-focusing,**
2. **Implementation of the learning activity itself** (including the mental process for performing the activity properly), and
3. **Self-monitoring.**

Expert learners engage in these three activities both independently and, more or less, at the same time. In other words, the student focuses her attention and monitors her learning throughout her performance of the learning activities.

Attention-focusing increases the likelihood that studying endeavors will be productive. Self-regulated learners use strategies to focus and preserve their attention on their learning tasks. These strategies include motivational control strategies (which help the students find the push within themselves to do the necessary work), emotional control strategies (which help the students control feelings of inadequacy and anxiety when progress is slow and feelings of overconfidence and wavering focus when the learning is going particularly well), and focus control activities (which prevent distractions from interfering with the effort to learn).

The learning activity itself involves engaging in the selected learning strategy(ies). Self-regulated learners possess a wide variety of learning strategies, and they have learned them in such a way that they can readily use them without regard for the subject area (e.g., history, educational psychology, the construction industry, law) in which the task happens to fall. They use verbalizations of task requirements (e.g., first, I will do this, then I will do that, etc.) and visualizations (e.g., picturing what a good diagram of a concept looks like before drawing one) to ensure they perform the tasks correctly.

There is general agreement that the self-monitoring aspect of the performance phase is crucial. The student's goals and strategy decisions set criteria for this monitoring, which includes monitoring the effectiveness of the selected strategies for achieving the student's learning goal and monitoring the time and effort the strategy is requiring and then weighing the two independently and, in some instances, against each other. Expert self-regulated learners monitor their learning as often as possible and, in each instance, very close in time to the event being monitored.

The Reflection Phase

The reflection phase of the cycle guides the students as to their future learning endeavors. The student reflects on what she did and how effective it was and then considers the implications of her experience for future learning activities.

This phase includes four facets:

1. **Self-evaluation,**
2. **Attribution,**
3. **Self-reaction, and**
4. **Adaptation.**

Self-evaluation involves comparing one's performance with a standard, either in terms of the standard set by the learner or the instructor's objectives or in comparison to other learners. Expert self-regulated learners evaluate how they are doing accurately and immediately after they have completed their learning activities.

Having evaluated their performances, self-regulated learners develop attributions about the causes of their results. Attributions are explanations for why the students performed well or poorly. Although students' personal beliefs and the results of others greatly influence students' attributions, self-regulated learners are much more likely to attribute failures to correctable causes, such as insufficient effort or incorrect selection of learning technique(s), and to attribute success to personal competence. These attributions lead self-regulated learners to try again and to try harder when they fail; in contrast, novice learners are more likely to attribute their failures to ability and, therefore, are more likely to give up and stop trying.

Attributions are closely connected to the next facet, self-reactions, which are the students' emotional feelings about themselves based on the results and on the students' attributions of the causes of those results. Self-regulated learners generally feel better about themselves as learners, even when they encounter learning difficulties, and therefore are more likely to persist to success.

The students' attributions influence their adaptations because, having identified the sources of the errors, they are able to brainstorm and select the necessary adjustments for future learning endeavors. Self-regulated learners are therefore more adaptive because they recognize both that learning difficult skills may require many practice cycles and that systematic variations in approaches will help them overcome learning difficulties.

Reflection Questions

1. At various times in this chapter, as well as in Chapter 1, self-regulated learners are described as "proactive," "in control," "strategic," "consciously aware," "goal oriented" and "driven to rectify failure and to construct understanding." To what extent are these characterizations an outgrowth of engaging in the behaviors described as a part of the SRL cycle?
2. What aspects of the SRL cycle make sense to you? Why? (What have you observed in your life as a student that makes you believe that these aspects will work for your

law school studies?) What aspects of the SRL cycle do not make sense to you? Why? (What have you observed in your life as a student that makes you believe that these aspects will not work for your law school studies?)

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Chapter 5

The Forethought Phase of the SRL Cycle

The forethought phase sets the table for the rest of the cycle; it is the preparatory phase of the SRL Cycle. When a student engages in this phase, her goal is to ready herself to learn so that her learning experience is as efficient and productive as possible. The danger of omitting this phase is similar to the danger of building a home either without plans at all or of having plans but failing to consider all relevant construction issues (cost, timeline for completion, region [are there tornado or earthquake safety issues to consider?], style preferences, etc.). The result will likely fall far short of what it could have been.

In many ways, you may perceive this phase as a process of simply being explicit, of forcing yourself to make conscious, thoughtful decisions about your study plans as opposed to “just studying.” In fact, in the beginning, you may feel that some of these steps require you to be excessively conscious, to act unnaturally. You may even feel these acts are needlessly time consuming at first. If so, one of your goals for the first semester of law school should be to overlearn these steps, to develop automaticity in the use of these planning strategies so that the steps become natural and speedy.

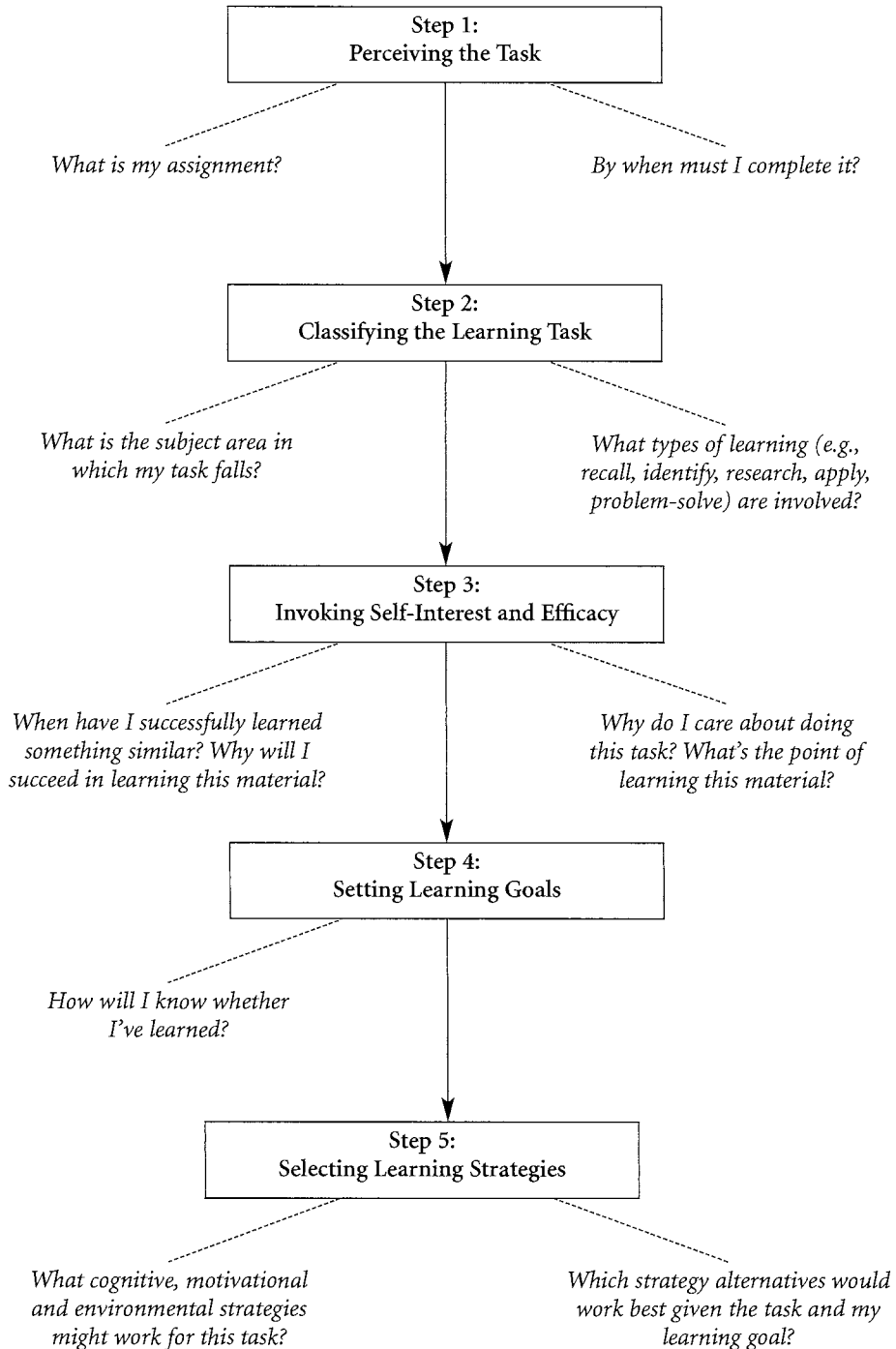
The forethought phase should be seen as a process. The learner moves through this process in a fairly linear, straightforward way. The purpose of the forethought phase is to prepare yourself to begin learning. You must come to grips with what you need to learn and how you will go about doing so. The forethought phase consists of the following activities: perceiving the task, classifying the learning task, invoking self-interest and efficacy, setting learning goals, and identifying learning strategies choices and selecting from among them. This phase can be shown graphically as a linear process through which you must progress. Figure 3 below depicts this process as a series of steps and identifies the questions implicated by each step.

Step 1: Perceiving the Task

- (1) *What is the assignment?*
- (2) *By when must it be completed?*

As a student who is or will be going to law school, you almost certainly already are skilled at performing this task. As reflected in the information-processing model above, learning tasks, like all mental tasks, begin with perception and the choice to focus on the task. Thus, the first task for you, as a law school learner, **perceiving the task**, is to

Figure 3: The Five Steps of the Forethought Phase



recognize the need for engaging in learning and to choose to attend to a learning task. You must determine that you need to do something (get ready for an examination, read a textbook, memorize course material) and your deadline for completing the task. For example, a syllabus for a Criminal Law class might include the following two entries, among many others:

“Week 1 The Mental State pp. 118–165”

and

“Week 8 Midterm Examination Be prepared”

To succeed in this course, you need to perceive that the first entry is a reading assignment related to something called “The Mental State” and the other entry is a disclosure of when you will be taking your midterm and therefore actually is an assignment of all the tasks necessary to be prepared to take the examination by the eighth week of class. It may or may not be surprising for you to know that many students get so wrapped up in the week-to-week assignments of law school that they fail to engage in the activities in which they need to engage to prepare themselves for the most crucial tasks—examinations. Try not to get so caught up in your day-to-day law school tasks that you postpone exam preparation to the last few days before your exams. While that approach may have worked well for you in college, it won’t work well in law school.

Having perceived a task, learners, even novice self-regulators, then contemplate what’s involved in performing the task.

Step 2: Classifying the Learning Task

- (1) *What is the subject area in which the task falls?*
- (2) *What types of learning are involved?*

Just as I predicted you are skilled at perceiving tasks, I also suspect that you, like most readers of this text, have classified tasks before, although you may not have done so at the level necessary for law school and law practice success. Not all learning tasks are alike, and different tasks require different learning strategies. Expert learners take vastly different approaches depending upon whether they are reading an economics textbook, writing a paper, researching a question, memorizing formulae in preparation for a chemistry test or learning a new musical piece to play on a musical instrument. For example, a law school reading assignment might require organizational strategies, such as outlining rules or creating graphic organizers depicting the relationships among the concepts you are learning, and might require comprehension strategies, such as pre-reading and questioning. Similarly, a law school writing task, even during an examination, might require different organizational strategies than you have used in the past and would require editing strategies. Finally, a memorization task might require selection from a wide variety of strategies, such as rehearsal (reviewing flashcards), summarizing, or mnemonics, the choice of which would depend upon your purpose in memorizing, your planned use of the memorized information, your preferred learning style, and your possession of contextual information.

By **classifying** the learning task at the outset, you can make it easier for you to later decide which learning strategies would be most effective. The first classification is a sim-

ple one, requiring less than five seconds—identifying the subject area in which the task falls. In the first weeks of law school, you will receive many assignments and have significant and seemingly overwhelming demands placed on your time. Consequently, you will need to take a few moments and make sure you have planned how your studying will get done.

A somewhat harder classification involves identifying the nature of the assignment. Law school learning tasks do not vary as much as college tasks vary. However, in law school, you will have multiple tasks to complete every single day and so must determine exactly what each task demands so that you can select, from among the many possible strategies, the strategy best suited to each tasks' successful and efficient completion.

Law school learning tasks fall within one of five categories: **reading comprehension**, **research**, **synthesis**, **problem-solving** and **exam preparation**, which includes aspects of memorization, organization, concept learning (known by law students as issue spotting) and two types of principle learning (application of rules to facts and applying and distinguishing cases). The discussion below describes in general terms these various types of learning activities. This discussion, by necessity, does not describe how to perform these tasks; that discussion will come later. At this stage, my goal is to give you enough information that you are able to readily classify the types of learning tasks you will be performing in law school.

Legal Reading Comprehension

Reading comprehension tasks in law school most often involve reading and understanding court opinions and statutes. These assignments are the typical day-to-day assignments students receive from their law professors. Law professors give these assignments and expect the students not only to read the cases and rules but also to understand them.

The good news is that educational psychologists have developed a vast body of knowledge with respect to the techniques best suited to helping students enhance their reading comprehension. In fact, some students may already be familiar with the SQ3R method of reading. SQ3R describes an approach to reading non-legal texts that has been shown to be an effective tool for enhancing student reading comprehension. Moreover, recent studies of law students reveal that successful law students and lawyers read court opinions differently than their less successful peers, using techniques not unlike those used by experts in the SQ3R method. Later in this book, I will describe and demonstrate these techniques.

Research

Research involves discovering what the applicable law is. Typically, it involves working through a procedure in which what the student finds governs the next step (or, more accurately, the next branch of steps) of the procedure. For example, if, during an early step, the student learns of an applicable statute, the student would then find the statute and cases applying the statute. On the other hand, if the student determines there is no applicable statute, he or she will have to search an index of cases organized by subject area. Because research skills involve what educational psychologists call “pro-

cedural learning," a crucial technique for developing these skills involves memorizing the procedure, including all the decision and information steps that could lead in different directions. Techniques for doing so are presented later in this text.

Synthesis

Synthesis, in the law school context, refers to making sense of a set of cases all of which at least appear to address the same subject but which also appear to be in conflict. It involves reconciling the conflicts among the cases or recognizing that the cases cannot be reconciled. Synthesis tasks are typically an implicit, rather than an explicit, part of law school assignments. In legal writing or first-year professional skills courses, students must reconcile a set of cases as part of a larger problem-solving, hypothetical-based task. In other words, in such courses, students are given a hypothetical set of facts. Their task, in part, is to research and find the relevant statutes and court opinions. Once the student has found the relevant statutes and court opinions, the student must make sense of them, reconciling or at least understanding any potential conflicts among them. Once she does so, she is able to use the cases and statutes to analyze the hypothetical facts.

Problem Solving

The entire process of reading a hypothetical set of facts, determining the body of applicable law (or, more likely, the bodies of applicable law), researching and synthesizing the law (or using the law as the student has learned and synthesized it throughout a course), and then analyzing how lawyers representing each of the hypothetical parties would argue the analysis of the facts and predicting an outcome is collectively referred to as problem-solving. Typically, as noted above, the student is given only the hypothetical set of facts and then is asked to analyze those facts as lawyers representing all the parties described in the facts would do. Law school papers and examinations, as well as bar examinations, almost exclusively test students' problem-solving skills. The evidence that the student has engaged in all these learning activities is his or her written product, the paper or essay. For this reason, writing skills in general and legal writing skills in particular are crucial to law school success. At the same time, it is easy to erroneously perceive law school exams and papers and the bar exam as principally a writing enterprise. In fact, it is more accurate to understand all three tasks as being premised on the assumption that all law students are good writers, and it is even more accurate to say that law school exams and papers are a hybrid, writing and thinking enterprise in which good, organized thinking is likely to produce good, organized writing.

Educational psychologists and law professors have developed approaches to such problem-solving tasks that make this process somewhat easier; those techniques are one of the subjects addressed later in this book.

Exam Preparation

Finally, most law school courses have final exams (and many have midterms) for which the students must be preparing throughout the semester. Exam preparation includes the reading comprehension, synthesis and problem-solving tasks described

above and five other main tasks: memorization, organization, concept learning, principle learning, and exam writing. Few professors, however, assign preparation activities; they just schedule tests. *Students must perceive the need to engage in exam preparation activities on their own*, must sequence and schedule them on their own and must monitor their occurrence and effectiveness on their own. Because successful preparation for law school examinations requires students to engage in each of these types of learning tasks, each is described in some detail below and is explored in depth later in this book.

Memorization and organization. Because law school exams require students to recall and use the rules, holdings, policies and syntheses they have learned and developed over the course of the semester, memorization of each is a prerequisite to success. It is common for law professors, who are not necessarily experts in human learning, to assert that students should not memorize the rules and holdings. They do not literally mean that students should not know the rules and holdings; rather, what they are communicating is that, while students need to memorize the words of the rules and holdings, they need to do much more than merely memorize. Students also need to understand what the words mean and how to apply the rules and holdings. Of course, because law school exams test the ability to apply the law, students also must have memorized how to perform these skills.

Moreover, it is not enough to have memorized and to understand the rules, holdings, policies and syntheses. While students need to know every tree in the forest (all the rules, holdings, policies and syntheses), they must also understand the forest. Law school exams require seeing the big picture, seeing how the material all fits together. One reason for understanding the material relationships among the concepts has already been addressed in connection with the above discussion of Schema Theory; understanding the relationships among concepts makes the memory trace stronger. In addition, knowing the relationships among the concepts makes it easier to identify which of the concepts are being tested by a particular examination hypothetical.

Concept learning. Even flawless memorization and excellent organization are insufficient to achieve law school success. While both memorization and organization are prerequisites for success, even a student who has performed these two tasks flawlessly might not pass her law school examinations. That possibility stems from the fact that law professors assign grades on law school exams based on the extent to which the student demonstrates her possession of legal reasoning and law school exam writing skills.

Moreover, a crucial sub-skill of legal reasoning is the ability to read the hypothetical question(s) on examinations and classify the legal disputes implicated by the hypothetical facts. No law school examination tests every concept studied over the course of the semester. For example, in a criminal law class, students will study dozens of different crimes. On criminal law examinations, however, students likely will be tested on less than half of those crimes. A colleague of mine once described this testing phenomenon as "the traffic cop approach." Traffic cops know that, if they appear on the highway and give tickets to the select few they catch speeding, everyone will slow down because of the threat of being caught. Similarly, by threatening to test every concept the students have studied, law professors get students to slow down and study every concept.

Law professors and law students use the term "issue spotting" to describe this process of identifying which of the concepts are actually being tested on a particular exam, and educational psychologists use the term "concept learning" to describe the

same process. Regardless of the label, the process requires sifting the facts in the hypothetical to determine which concepts a reasonable lawyer would regard as "at issue." It is impossible, at this early stage of your legal education, to explain the nuances of issue spotting so that you can fully understand what is involved in performing this skill and why it is a difficult skill to master. For now, you just need to understand that you must plan studying activities that prepare you to spot issues on your examinations. You also need to know that there are studying and learning practices that will prepare you. The best practices include the organizational strategies and other concept-learning strategies addressed later in this book. In addition, students striving to build their issue spotting skills need to practice the skill itself, to identify the key aspects or attributes of the concept and to come up with examples, non-examples and debatable examples of the concept. These ideas are explained and demonstrated later in this book.

Principle learning. Law school examinations, as I have explained, require students to apply the rules, holdings and policies they have learned. Educational psychologists refer to this application process as principle learning. Principle learning, in law school, involves demonstrating, in writing, your reasoning process. You will be explaining how a lawyer in the real world might argue that the requirements of a particular rule or holding are met and how another lawyer might argue that the requirements of a rule or holding are not met. This explanation would include a prediction of how a judge or jury might decide between the lawyers' arguments and an explanation of that prediction. Learning this skill (or, perhaps more accurately, these skills), which lawyers and law professors, perhaps a bit sloppily, call "application," "analysis," "legal reasoning," or, even more abstractly, "thinking like a lawyer," will be the major focus of the first year of law school and is the focus of a later chapter in this book. Learning this skill really does take at least one full year for most students. Like other difficult-to-learn skills, such as calculus skills or the skills involved in mastering a musical instrument or a sport, application requires law students to know what to do, to know why they are doing it and both to practice the skill on their own and to seek out opportunities for "coached" practice, where the student gets feedback from peers or experts.

Law school exam writing. Although, in many respects, law school examination writing is the sum of organization, memorization, concept learning and principle learning, it also really is a skill in and of itself. Part of the skill involves thoughtful combination and coordination of the skills addressed above. Law school exam writing also involves time and stress management, planning and outlining and general writing sub-skills. In fact, this text devotes a large portion of a chapter, Chapter 16, to detailing strategies for developing the skill of writing a law school exam. By far, the most important strategy involves writing practice essay exam answers for each of their courses and getting feedback on those practice efforts.

* * *

Exercise 5-1 in the Expert Learning for Law Students Workbook (hereinafter the "Workbook") will help you develop the ability to identify and classify learning tasks. Because Exercise 5-1 will be the first such exercise, a few words about learning skills are warranted. Learning any skill requires practice. Consequently, there is a Workbook companion to this book to allow you to try out the new skills and begin to develop them. The workbook is designed so that you can use it in conjunction with this text. Most readers will choose to flip back and forth between this book and the exercises.

Once you know what it is that you must be learning, Step 2 is complete, and it is time to address the psychological aspects of the forethought phase.

Step 3: Invoking Self-Interest and Self-Efficacy

(1) Why do I care about doing this task? What's the point of learning this material?

(2) When have I successfully learned something similar? Why will I succeed in learning this material?

Ironically, while Step 3 is the step students are most likely to skip, it is, in fact, the step that is best correlated with student success. Some law students find it awkward or artificial to force themselves to think about why they are interested in what they are learning and why they believe they will succeed in learning it. Unfortunately, giving such short shrift to Step 3 is a big mistake. Although it seems like the least significant step, it may, in fact, be the most significant one.

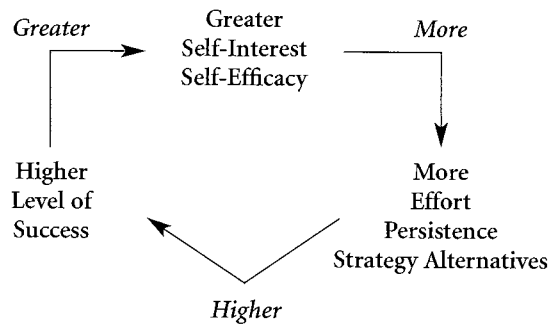
There are literally thousands of studies showing that students who get themselves interested in what they are learning (invoke self-interest) and who believe they will succeed in learning (invoke self-efficacy) outperform those who do not. For example, most people who have taken freshman psychology classes have heard of the studies showing that many pre-teen girls develop low self-efficacy for doing math and therefore do not perform as well in math classes as they are capable of performing. There are even studies showing that students who receive falsified positive information about their capability outperform those who do not receive such information or who receive negative information about their capability. These results make sense because learning is a product of effort, persistence and strategy selection. Students who are interested in the subject matter and believe they will learn are more likely to try hard, to persist in the face of the inevitable difficulties in learning anything new and to try alternative strategies if their initial strategy choices prove erroneous. As a result of this effort, persistence and strategic behavior, the students are more likely to learn what they need to learn. They then develop greater interest in what they are learning (because the understanding they gain makes the material more interesting) and greater self-efficacy (because they have succeeded) and therefore study more, persist more and use more strategic behaviors. In other words, self-interest and self-efficacy create a cycle of learning that leads to success in learning enterprises. Figure 4 on the next page depicts that cycle.

Invoking Self-Interest

Students can invoke self-interest by adopting one of four strategies. First, they can invoke interest in learning for its own sake. Attend any grade school class and you will find classrooms full of students who are excited by learning because growth, change and success are rewards in themselves. In fact, many law students who wait a few years after graduating from college before attending law school report that the absence from school taught them to appreciate the excitement of learning. Studies of students who are expert learners suggest that expert learners enjoy learning for its own sake much more than their peers do.

Second, students can invoke the interest in law that led them to attend law school. Everything you do in law school is part of a process of getting ready to be a successful lawyer. Most people chose to attend law school because becoming a lawyer was a dream. Recalling that dream often helps students find interest in what they are learning.

Figure 4: *The Self-Interest/Self-Efficacy/Better Studying/Better Results Cycle*



Third, students can enjoy the excitement and challenge particular to law school learning. Learning in law school is a challenge for almost everyone. It is much like learning to play a sport or a musical instrument well because it requires hard work and a lot of practice and it is not easy to learn. At the same time, learning in law school is exciting. At least part of the discussion throughout law school revolves around questions of what the law should be. For example, law students might discuss why the framers of the Constitution chose to create a right of free speech and what the limits of that right should be or whether, given that the Constitution has no explicit mention of a right to privacy, we have such a right. Most people seldom have time to contemplate these questions in their day-to-day lives.

Finally, it is always helpful for students to imagine how they will use what they are learning both in their lives right now and in their future lives as lawyers. This process does require some thought. For example, students who plan to practice criminal law or family law or environmental law may have difficulty developing interest in their study of contract law. They can do so, however, by recognizing that, in their day-to-day activities, they are making dozens of contracts (contracts to buy homes, cars, groceries, dinners, medical and dental services, etc.), for which knowledge of contract law may help in some way. Moreover, lawyers who practice criminal law sign contracts with their clients and their employers (the District Attorney's or Public Defender's offices, for example) and on behalf of their clients or the public (plea agreements). Similarly, family law practitioners not only sign client and employment contracts, but also draft custody and divorce agreements, and environmental lawyers make contracts with clients, employers and, on behalf of their clients, contracts with governmental regulatory agencies, such as the Environmental Protection Agency (EPA). Considering how they will use what they are learning helps students develop an interest in it.

Invoking Self-Efficacy

Invoking self-efficacy is no more difficult than invoking self-interest. It simply is a matter of identifying past successes and drawing analogies between those successes and particular law school tasks. Most broadly, nearly all of us can point to a past experience in which we struggled and, eventually, succeeded in learning something we found difficult to learn—a sport, a musical instrument, calculus, philosophy, a job task. All that is required is that the task be one that did not come easy. We can recall the struggle, the

need for hours and hours of practice, and the self-doubt. Hopefully, we can also recall the triumph of succeeding over that adversity.

Invoking self-efficacy is more a matter of remembering to do so than a matter of intellectual struggle. Try this exercise right now: Remember something you have learned that did not come easy to you at first. What made it hard? How did you manage to learn? How did learning it make you feel?

Exercise 5-2 in the Workbook is designed to help you develop the ability to invoke self-interest and self-efficacy.

Once a student has decided that she wants to learn and can succeed at doing it, she is now ready to set learning goals.

Step 4: Setting Learning Goals

(1) How will I know whether I've learned?

Most psychologists would agree that goal setting is not a process that is limited or should be limited to learning experiences. Rather, the process of setting achievable, challenging goals, and breaking them into manageable sub-goals where necessary, is a process that serves us well in all phases of our lives. We benefit because we have created a plan of action and a standard for measuring whether we have achieved it.

In educational settings, goal setting has been shown to be a crucial prerequisite to success. Students have been shown to perform as much as 30% better when they set appropriate goals and use those goals to monitor their achievement. In fact, in one study, students who set proper goals (as explained below) outperformed those who did not do so (*even though the students who set goals actually studied significantly less*). These results stem from the fact that setting proper goals create a blueprint for students, establishing the standard against which students can plan their studying and measure their results. Goals also help students know when they have to make an "online adjustment in their studying" (a change of approaches while the studying is ongoing) so that the change occurs before a learning issue has become a problem.

According to the studies of effective goal setting, effective goals meet the following four criteria, each of which I will explain and exemplify below by using examples from both within and outside the educational setting:

1. **Goals must be concrete.** In other words, the goal must describe what the student will be learning in terms of the behavioral evidence that the learning has occurred and the criteria by which mastery will be measured.
2. **Goals must be short-term.**
3. **Goals must be challenging.**
4. **Goals must be realistic, (i.e., achievable).**

Goal Setting Rule #1: The Goals Must Be Concrete

A goal must describe behaviors or actions and have explicit criteria for its achievement so that the student can know what she needs to do to achieve it. An abstract life

goal, for example—"I will exercise more," gives the speaker little guidance as to what she should do. What constitutes exercise? Is playing ball with a child exercise? Is weight-lifting exercise? How frequently must the person exercise to be able to say she is exercising "more"? Does "more" refer to the duration of each exercise experience or the number of exercise experiences per week or month? A behavioral, criterion-based goal would be: "I will do aerobic exercise for twenty-five minutes three times per week." Now, the speaker knows what constitutes exercise, how much exercise is minimally required each time and how often she should do it.

Likewise, an abstract educational goal, such as "I will learn the forethought phase of the SRL cycle," is as problematic as the initial exercise goal above; it fails to give the student a method for knowing what she should know and be able to do when she's done. What does "learn" mean? Must the student be able to recite each of the five steps from memory or select them from a list? Must she be able to explain what each step involves? How accurate must her recitation be? How will she know if she has accurately "learned" the forethought phase? An appropriate set of behavioral, criterion-based goals that would capture the same basic idea as the original "learn the forethought phase" goal would be:

1. "By the end of the first day of class, I will be able to list the five steps of the forethought phase and paraphrase the questions for each with 100% accuracy as measured by comparing my recitation with Figure 3."
2. "By the end of the first day of class, I will be able to recite in my own words how I will perform each of the steps with 80% accuracy as measured by comparing my recitation with my notes from this chapter."
3. "By the end of the first day of class, given an assignment for this class, I will be able, with 100% accuracy, to accurately classify it as a reading comprehension, research, synthesis, problem-solving or exam preparation task."
4. "By the end of the first day of class, given a learning task for this class, I will identify why I am interested in that task and why I believe I will succeed at it."
5. "By the end of the first day of class, given a learning task for this class, I will, with 80% accuracy, be able to set a learning goal that describes specific behaviors or actions, has explicit criteria for its achievement, is short-term, is challenging and is realistic."

Notice that each of these goals refers to *observable* behaviors (reciting, classifying, identifying, etc.). Note also that most have standards of performance. Some, those for which measurement is impossible because they are really goals that focus on emotions or attitudes, do not. Those tasks I thought could be mastered perfectly, such as the list of forethought steps and questions, have 100% accuracy as the measure; those learning tasks that are more difficult and more complex, such as all the information about each of the steps, have an 80% standard, reflecting that higher degree of difficulty. I selected 80% because it is the standard measure of mastery according to traditional educational standards. Finally, notice the number of goals I set and the fact that I included both knowledge goals (e.g., the list of steps) and skill goals (e.g., being able to set proper learning goals). Students sometimes forget to include both types of goals.

Goal Setting Rule #2: The Goals Must Be Short-Term

While most people and most students set long-term goals, such as becoming a lawyer and learning everything in a course, learning goals must be short term so that the stu-

dent can evaluate them close in time to when she set them. This approach allows more effective evaluation of learning and ensures that most study sessions are productive. For example, the above goals with respect to the forethought phase of the SRL Cycle all focus on what the learner would be able to do by the end of the class session in which the student will focus on the skills and knowledge in question. Of course, some goals, such as memorizing all the necessary law for a final examination, cannot be achieved in one session or even a few sessions. The key for such goals is to break them into short-term sub-goals, such as memorizing a defined portion of the rules. Thus, for a Criminal Law class, a student might set one goal of memorizing all the rules relating to homicides and a second goal of memorizing all the rules relating to thefts.

Goal Setting Rule #3: The Goals Must Be Challenging

Studies also show that it is important to set challenging goals. Goals should encourage you to stretch yourself. Students who set goals that are too easy often become bored and may even lose interest before completing them. Note for example that I combined memorizing the steps with memorizing the questions that go with the steps because I thought that memorizing the steps alone would be too easy.

Goal Setting Rule #4: The Goals Must Be Realistic

Just as the goals cannot be too easy, they also cannot be too hard or unachievable. It would be impossible, for example, to memorize everything in this chapter with 100% accuracy. Such a goal would lead to frustration and disappointment. Students need to set achievable standards. Likewise, time goals should be realistic. A 100-page law school reading assignment cannot be completed in only one or two hours. A student might be able to finish turning the pages within that time, but the student's retention and understanding would be so minimal that, in effect, most of the time would have been wasted.

A Few Final Thoughts about Setting Goals

Generally, goal setting requires some thought. You cannot simply look at an assignment in a law school syllabus (which may only list the pages to be read) and set a goal for it because you may not know what it is you must learn. To create behavior-focused, criterion-based, challenging yet achievable goals for such an assignment, you need to look over the assigned materials and get a feel for the topic, the length of the assignment and the complexity of the topic. You also, of course, would want to consider any instructional objectives provided by the instructor. Finally, you should check the goals you set against the four criteria by which goals are measured. Exercise 5-3 in the Workbook will assist you in learning to set appropriate goals.

Step 5: Selecting Strategies

(1) What cognitive, motivational and environmental strategies might work for this task?

(2) Which strategy alternatives would work best given the task and my learning goal?

The final, crucial step involves creating a plan for learning. The student (1) must decide the techniques she will use to learn, known as **cognitive strategies**, (2) must decide how, when, where and with whom she will use those strategies, known as **environmental strategies**, and (3) must plan how she will maintain her focus and attention and how she will deal with difficulties in learning, known as **motivational strategies**.

Motivational and Environmental Strategies

Within certain parameters, motivational and environmental strategies are a matter of personal preference and control. You are in the best position to know what will motivate you to get started on your studying, what you should say to yourself while you are studying to help you stay focused, what materials you need to study and where, when, how long and with whom you should study. A few best practices with respect to motivational and environmental strategies are worth noting, however.

Students need to plan for those moments when they are having difficulty focusing on their work, when they feel tired, burned out, anxious, etc. The acts of invoking self-interest and self-efficacy and of setting short-term goals are techniques that address some of these issues some of the time. Nevertheless, many students find it helpful to plan their own rewards for completing certain steps in a learning process, such as planning a ten-minute break for a phone call to a friend or loved one after finishing memorization of some defined portion of the materials. Another effective technique is to use self-talk, a term educational psychologists have developed to describe things students say to themselves to keep themselves on task and focused, such as “First, I will do _____, then I will do _____” or “Keep your eyes on the prize (the law school diploma)” or “I know I can do this; this is just like when I _____.”

Similarly, studies of student learning have identified characteristics of appropriate studying locales: quiet, free from distraction, and comfortable. In addition, to minimize any waste of time if you cannot figure out a concept or case you are studying, ready access to help, at least in the form of e-mail, is valuable. As described in Chapter 6, however, students vary in their learning styles. There are many students who prefer to study in locales that have none of these characteristics (i.e., in loud, distracting environments where there is no one nearby to turn to for help). For these reasons and others, your law school’s law library may not always be an optimal study locale. While it is quiet and peers can be a source of help, the law library can also be distracting because peers and friends may interfere with a student’s focus or distract her from studying. A home office also involves trade-offs. A home office can be quiet and help may be available via e-mail from peers and professors, but family members can be a source of distraction.

There are also best practices in terms of the amount and length of time for study. Overwhelmingly, studies have shown that mere time on task is not a predictor of success in academic matters such as law school. Every law professor knows of a student

who studied endlessly, but who did not do well in law school because her studying was not productive. Productive study requires a student to be well-rested and able to focus. It also requires taking short breaks every hour or two.

Expert learners take breaks and space their learning activities out over time rather than trying to cram all their studying together at once. Studies show that spaced study produces better and more efficient learning. Spaced study is superior to cram studying because it allows you to:

1. build your skills, by practicing the skills on which you will be tested, obtaining feedback on your practice and thereby increasing your skill level;
2. identify gaps in your understanding and skills while there is still time to rectify them;
3. obtain help from your professors and peers, behaviors that are typical of expert learners; and
4. rest before your examinations because studies show that, on examinations like law school tests that require creative thought, you are likely to perform better if you are well-rested.

Finally, the choice to study with others and with whom to study requires careful consideration. Other students, as described later in this book, are an excellent source of practice and feedback as part of exam preparation activities. Peers also are helpful sources for dealing with areas of confusion and getting the necessary social and emotional support. Seeking such help from peers is highly correlated with educational achievement. Moreover, students benefit even more from helping their peers; if you are forced to understand something well enough to explain it to your peers, you must attain a high level of mastery, making this activity one of the most productive learning enterprises in which students can engage. For this reason, nearly all students need to include peer work in their study plans.

Such activities can become counter-productive, however, if you select peers who are not as committed to their own learning as you are and therefore are unwilling to do their share of the necessary work, if you become embroiled in social conflicts with those peers, or if the presence of peers distracts you from doing those tasks on which you must work alone. Expert students recognize when peer studying is necessary and appropriate and when it may be a distraction, and they adjust accordingly.

Having learned what environmental and motivational strategies are, you are now ready to develop and practice using these skills. Exercise 5-4 in the Workbook will allow you to practice identifying your personal environmental and motivational strategies.

Cognitive Strategies

There are a large number of cognitive strategies for each of the types of learning. In fact, there are as many 50 cognitive strategies that learners can use. Figure 5 is a list of cognitive strategies. It includes definitions of most, but not all, of the strategies explored in this book. I apologize for the small font; I wanted you to have this chart all on one page.

Considering Figure 5, an example that includes at least some familiar strategies should give you a feel for the variety of choices available to expert learners. To memorize the five steps of the forethought phase, one set of techniques is collectively referred

Figure 5: Cognitive Strategies Relevant to Law School Learning

Type of Strategy	Strategy Name	Brief Description
Pre-reading	Opinion pre-reading	Learning activities before reading an opinion
Reading	Opinion reading	Learning activities while reading
Note-taking from texts	Opinion briefing	Activities to record understanding of an opinion
Classroom learning	Class preparation	Activities to prepare for class and take notes
Assistance	Self-help	Restudying, using supplemental resources
	Peer help	Using cooperative learning techniques
	Professorial help	Approaching professors with planned questions
Organizational	Deconstructing rules	Breaking rules into their sub-parts
	Outlining	Creating a subject outline
	Timelines	Dividing a line into time periods to show key events
	Comparison charts	Creating a table listing items to be compared along the left side and comparison topics across the top
	Hierarchy charts	Connecting high level concepts to sub-concepts
	Flowcharts	Showing a process
	Mind maps	Connecting a central concept and all related concepts
Memorization	Analogizing	Connecting new learning to prior learning
	Chunking & clustering	Reducing info into memorable pieces
	Imagery	Associating new learning with a memorable image
	Mnemonics	Techniques to create artificial memory associations
	Flashcards	Index cards to facilitate easy testing of concepts
	Paraphrasing	Restating rules and holdings in one's own words
	Examples & non-examples	Learning concepts by creating unmistakable examples and non-examples of them
Time management	Creating calendars	Working backwards from due date to plan project
Stress management	Invoking self-efficacy	Recalling past successes with difficult tasks
	Overlearning	Insuring ready recall by overstudying
	Reframing	Substituting positive for self-defeating thoughts
	Planning attention-focusing	Planning strategies for re-focusing if you become distracted during an exam
Research	Deep breathing and progressive relaxation	Engaging in deep breathing and systematically tensing and relaxing each muscle in the body
	Research logs	Recording research results to compare strategies
Legal writing	Research planning	Developing steps for a particular research task
	Outlining	Organizing a paper or essay exam answer
	Check-listing	Developing questions to ask while editing a paper
	Multi-pronged reading aloud	Reading a paper aloud several times with different focuses each time
Issue spotting	Emulating experts	Selectively and consciously adapting experts' work on the same type of project
	Reorganizing	Finding alternative relations among course concepts
Essay exam writing	Practice	Practicing attending to details and identifying issues
	Using IRAC+	Using expanded IRAC format
Exam preparation	Practice	Writing practice essay exams
	Instructor study	Identifying areas of emphasis and preference
	Overlearning	Acquiring knowledge to a level of automaticity
	Self-created hypos	Creating exam-type questions on one's own
Learning from tests	Using feedback from instructors to improve	

to as rehearsal. Strategies in this category include: repeating the list over and over again and making and testing oneself with flashcards. A second set of techniques is known as mnemonics. Most students are familiar with the mnemonic technique that involves creating a word or phrase based on the first letter of each item. There are actually three other mnemonic techniques. A third set of techniques is known as organizational techniques, which include breaking down the information into clusters, outlining the material and creating graphic organizers (such as the flowchart depicted in Figure 3). In fact, there are at least four different types of graphic organizers commonly used. A fourth set of techniques is called elaboration techniques. These techniques involve drawing analogies between new learning and the student's prior learning. All of these techniques are described and explained later in this book. For now, this list should give you some insight into the wide variety of approaches available to you for each type of learning task.

Your task during the select strategies step of the forethought phase, of course, is to decide which strategies would be most productive for the learning task in which you are about to engage.

An Introduction to the Factors the Student Should Weigh in Making Cognitive Strategy Selections

There are three factors that bear on the question of which cognitive strategy would be most appropriate for any particular learning task:

1. The demands of, benefits of and limitations of each possible strategy.
2. Your learning goal(s), the time available to complete the task and the importance of the task relative to alternative uses of your time.
3. Your learning style and personality type (see Chapter 6), and, to a lesser degree, your familiarity, experiences and comfort with each of the possible strategies.

Each cognitive strategy facilitates different aspects of learning and each has its own limitations. For example, using an elaboration technique is useful for connecting new learning to prior learning but does not help you create a schema for a body of new information. Creating a graphic organizer helps develop a schema for new learning but does not really allow you to include all the detail you will need to know for your exams. Preparing an outline allows you to include an unlimited amount of detail but inhibits the ability to see the big picture or develop a schema for the new learning. Thus, in selecting a cognitive strategy, you should consider the benefits and detriments of each possible strategy. These considerations are explored in greater depth later in this book.

You also need to consider your learning goal(s), the time you have to complete the task and the importance of the task. The learning goal, of course, creates the standard by which you will measure success and therefore should weigh heavily in the choice of strategies. You must select a strategy that can work to achieve your goal. At the same time, some strategies with which you may be most comfortable, such as reading and re-reading class notes, may require considerably more time and effort but may only produce a marginal learning gain or may be less productive than other uses of your study time. The time available to complete the task, therefore, is a consideration. The importance of the task must also be considered. As explained in Chapter 2, while students need to be prepared for class to help retain new learning and to benefit from the opportunity for in-class feedback from the professor, it is important not to assign disproportion-

tionate value to the experience of appearing smart to peers in class. Consequently, you should not prepare for class in a way that interferes with the other learning activities you should be doing. For example, many new law students devote so much time to class preparation that they fail to make time to engage in activities to consolidate their learning, such as reviewing their class notes, outlining the course or creating graphic organizers, or writing practice exams.

The final factor you should consider is your individual learning profile. Your learning style, personality type, strategy preferences and experiences and comfort with each of the strategies will influence the effectiveness of any strategy you choose. As part of your study of the materials in the next chapter in this book, take the suggested online assessments of your learning style and personality type. The materials detail how this self-knowledge should influence your strategy selections. These materials explain that each of us has a set of approaches with which we are most comfortable and, all other things being equal, a strategy that best suits our learning style and personality type is better than a strategy that is antithetical. However, all other things are only sometimes equal. Some strategies are better for some purposes, regardless of individual preferences. Moreover, the more techniques a student masters through practice, the more choices she will have when encountering a previously unseen learning experience. Most significantly, as discussed in Chapter 4, each learning experience offers you additional information about what works best for you with respect to a particular learning task; that information is crucial to future technique selections. In fact, the most successful students will alter the techniques they learn in this book both as they are using them and in planning future learning activities, based on the results they obtain.

In short, more than anything else, expert learners are expert in how they learn best. While you will be developing that expertise through your activities in reading this book and as you apply the skills to learning activities in law school classes, to your work, and to your personal life, you will not complete your conversion into the status of learning expert for about one year, after having had the chance to hone your learning strategies through use and adaptation.

Time Management

Law school classes require incredible amounts of work; in general new law students devote 3 or 4 hours outside of class for every one hour in class for each of their law school subjects. However, each student is different. The correct amount of time for any learning task is the time it takes you to develop mastery. Because of the heavy workload, almost all law students feel pressed for time.

In Appendix A of the book, you will find a time management/self-monitoring log that you can use to plan your studying. The log allows you to record your mastery learning goals, decide how, where, and when you will study, and then record the actual results of your studying. Many students have found such logs incredibly helpful. The logs will help you determine the circumstances in which you work most productively and the circumstances that prevent you from learning effectively and efficiently. In this way, over time, you will become increasingly efficient and effective. In other words, you should approach time management the same way you approach other aspects of your learning.

Some Useful Strategies. While there are many ways to manage your time, there are some best practices. Here are some keys to effective time management:

- ✓ *Take the time to consciously plan your time.* Take control of your time by having a schedule and sticking to it. Start with your list of tasks, set learning goals and then assign times for achieving each of your goals.
- ✓ *Work backward from deadlines.* Successful time managers start with deadlines and a list of all the tasks involved in accomplishing a particular goal. They assign each task to a specific day and time and build in time for the inevitable struggles involved in performing complex, difficult tasks. In law school, working backwards from deadlines insures that you will finish tasks with plenty of time for revisions and necessary help.
- ✓ *Work on the most challenging work when you are freshest.* Be sure to spend your time as if it's a precious commodity. Figuring out new, difficult material is more challenging than converting a course outline to flashcards for memorization purposes. Writing practice exams requires more mental energy than checking the accuracy of your citation form. Plan accordingly.
- ✓ *Safeguard blocks of time.* Say no to people and activities that interfere with your designated study times.
- ✓ *Be willing to adjust and adapt.* Change any aspect of your schedule that is not working for you.
- ✓ *Work from prioritized to do lists.* Start each day by carefully constructing a "to do" list that ranks priorities among the tasks you must accomplish. Make sure you have enough time to accomplish your highest priorities.
- ✓ *Overcoming a Tendency to Procrastinate.* If you have a tendency to procrastinate, this discussion is for you. It is helpful to start with an understanding of the causes of procrastination. There are several causes, including perfectionism, fear of failure, difficulty in estimating the time required for a task, and an inability to distinguish between important tasks and essential tasks. Procrastinators tend to underestimate the time required to complete a task and overestimate the non-existent benefits of being backed against the wall timewise. In fact, procrastinators perform below their capabilities, enjoy the process less, and suffer from higher levels of exhaustion, substance abuse and illness.

The most important thing a procrastinator can do is to start a task, not plan the task or discuss the task or travel to a place to do the task, but start the task. Other useful things you can do to minimize your procrastination inclination include

- labeling your reasons for not getting started for what they are—excuses,
- identifying the causes of your choice to procrastinate the particular task you are procrastinating,
- confronting your self-doubts, false beliefs, and perfectionism, and
- using activities you enjoy, television, movies, hanging out with friends, etc. as rewards for completing tasks you need to complete rather than using those activities as procrastination activities.

Reflection Questions

1. How will you know in what learning tasks you should be engaging?
2. Why are you going to law school?

3. What courses will you be taking in your first semester of law school? (Find out if you do not already know). What do you find interesting about each subject? (Find out what each course basically deals with—e.g., contract law deals with private disputes between parties relating to promises the courts deem enforceable and then brainstorm determine why that subject might interest you).
4. Why is self-efficacy so highly correlated with student success? Can you think of a time when your self-efficacy influenced your results on a test, project or task?
5. Why are effective learning goals concrete, short-term, challenging and realistic?
6. Why does spaced study produce better learning than cramming?
7. What are the obstacles to your time management in law school? What will be the keys to success in managing your time?
8. What motivational, environmental and cognitive strategies have been most effective in your past learning exercises?

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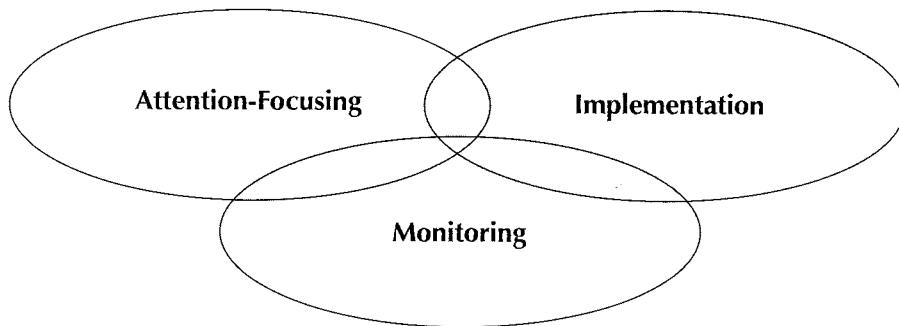
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Chapter 7

The Performance Phase of the SRL Cycle

Unlike the forethought phase, the performance phase of the cycle does not involve a set of independent steps through which the student moves. Rather, students sometimes engage in each of the three tasks of the performance phase—attention-focusing, implementation and self-monitoring—at the same time and sometimes one at a time but in no particular order. In other words, while you are implementing your learning strategies, you also repeatedly should focus your attention and monitor your learning progress. Thus, a graphic depiction of this phase would not appear as a line, but, rather, as an interlocked set of circles as in Figure 6 below.

Figure 6: The Performance Phase



For the purposes of this discussion, however, it is helpful to consider each of these tasks independently.

Attention-Focusing

Students need to track their attention whenever they are engaged in learning, regardless of whether they are reading a text or participating in a classroom experience. As described in Chapter 3, the cognitive model of human learning begins with the assumption that the learner successfully has focused her attention on the learning task; otherwise, the new learning never even reaches her short-term memory. Almost all of us have had the experience of engaging in pseudo-studying. Pseudo-studying is an ac-

tivity that looks like studying from the outside but actually involves no learning. For example, many of use have had the experience of reading a page in a textbook over and over again without taking in anything or have spent hours in the library supposedly studying with a friend during which we have actually devoted most of the time to socializing. In college, such wastes of time are not always problematic; in law school, however, frequent pseudo-studying results in poor performance.

Pseudo-studying is usually a result of poor attention-monitoring caused by boredom, fatigue or self-doubt. Expert self-regulated learners do not, therefore, allow themselves to be distracted by self-doubt, fatigue or boredom. Rather, they use one or more of the following volitional control techniques to focus their attention on the learning activities in which they are engaged:

1. Following each step of a procedure sequentially and checking off each step as they go (systematic guides);
2. Verbalizing (out loud) what they are about to do (self-guiding verbalizations);
3. Developing mental images of what they are trying to do as they are doing it (imagery); and
4. Praising themselves as they work (positive self-talk).

Most cognitive strategies follow a linear procedure that can serve as a systematic guide to the learner's actions and thereby help the learner retain his or her focus. In other words, the procedure serves as a control on the learner's actions. For example, creating a comparison chart (a type of graphic organizer used to help learners understand the comparisons between two similar concepts or items) requires the learner to (1) decide to create a comparison chart, (2) identify and list the number of things (e.g., three cases) being compared, (3) identify and list the number of characteristics (e.g., parties to the cases and years the cases were decided) by which the learner will compare the things being compared, and (4) create a chart with the items being compared (the cases). A learner would focus his or her attention on the task of creating such a chart by following the procedure from first step to the last step, checking off each step as he or she completes it. Because this approach occupies the learner's brain, it inhibits other thoughts, such as self-doubt, from invading the learner's consciousness and distracting his or her focus.

To focus attention, the learner might also (or alternatively) use self-guiding verbalizations. In other words, the student would verbally state out loud each step before performing it. Thus, the learner might say, "First, I will identify the number of things to be compared." The act of verbally stating a plan of action out loud recalls that step of the procedure into the student's working memory so the student can implement it accurately.

Another approach involves using imagery, picturing a comparison chart the student had seen some time in the past or picturing what a successful product of his or her efforts would look like. The student retains the image in his or her mind the entire time that student is engaged in the learning strategy. The student uses the image both as a guide to keep focused on creating the comparison chart on which he or she is working and as a tool to help him or her avoid distractions. As many successful athletes have discovered, imagining a good result increases the likelihood it will occur.

Finally, as many athletes also have discovered, positive self-talk, praising oneself as one works, increases the likelihood of success. Coaches actually teach athletes to make encouraging statements to themselves as they are engaging in their sports (e.g., "Nice shot!"). Students who engage in such positive self-talk are much less likely to create ob-

stacles to their own learning, such as procrastination, low effort or spreading themselves too thin.

Exercise 7-1 in the Workbook focuses on helping you develop these tools for maintaining focus during learning experiences.

In addition, expert learners use the above strategies in conjunction with motivational control, which keep students on task by making sure the student knows why she is engaged in the learning task, and emotional control, which involves being vigilant against either undue anxiety or overconfidence about the likely success of the learning project.

Implementation

This part of the performance phase involves actually performing the learning tasks. Part II of this text, Chapters 9—16, describes the learning strategies most helpful to law students. Each chapter describes the strategies, explains how to perform them, and identifies the strengths, weaknesses and uses of the strategies. Thus, at this stage of your study of SRL, you simply need to be aware that this part of the performance phase involves performing those activities.

Self-Monitoring

In the context of the performance phase, the most significant distinction between naïve self-regulated learners and their expert peers is that the experts more closely and more accurately self-monitor their learning. In fact, studies of both undergraduate and graduate students found that students who simply filled out a self-monitoring log (similar to the log in Appendix A to this text) achieved significantly higher grades than those who did not do so.

Expert learners self-monitor five things—their comprehension, their efficiency, their environmental strategy choices, their help seeking, and their attention. Once students become expert at self-monitoring and at SRL (once they have developed automaticity in SRL and in the cognitive strategies they are using), much of the monitoring occurs offline (on a less conscious level). In other words, expert self-regulated learners are always vigilant about their comprehension and their efficiency. As a result, the self-monitoring requires less conscious effort.

The monitoring process often causes expert learners to change or modify their approaches and techniques during the learning process. Expert learners do not merely observe their learning; they evaluate it with a purpose in mind—achieving their learning goals. Consequently, expert learners change their approaches whenever their self-monitoring reveals that those approaches are not working.

Monitoring of Comprehension

First and foremost, expert self-regulated learners monitor their comprehension. They keep track of personal indicators of success as they are engaging in the implemen-

tation of their learning strategies. The expert students can tell when they are getting it and when they are not, and they can and do use this information to alter their approaches before they get poor grades. Many naïve self-regulators, in contrast, overestimate their understanding and therefore fail to study as thoroughly as they need to study.

Monitoring of Efficiency

Second, expert learners monitor not only whether they are learning, but, also, how efficiently they are learning. They evaluate how long they have been studying and how much effort that studying is requiring and then weigh those two factors against the effectiveness of the process and the importance of the learning task. This effort gives the student information upon which to modify his or her strategies to streamline them (when it is appropriate to do so) and to prepare themselves for the time and effort certain difficult tasks will require (and therefore plan similar learning activities in the future).

Monitoring of Environmental Strategies

Third, expert learners monitor their environmental strategies, paying attention to where they are studying, when they are studying (including the time taken for study breaks) and with whom they are studying. As discussed in Chapter 5, all of these considerations are important to students' success. Expert learners make sure that they actually study when they had planned to study, that they take scheduled breaks to allow themselves spaced learning experiences, that the location in which they have chosen to study facilitates their learning and that their study partners enhance their learning.

Monitoring of Help-Seeking

Fourth, expert learners monitor their own help-seeking activities. Having identified a comprehension difficulty (and such difficulties arise for all learners in all educational settings), they monitor their efforts to get the help they need from their instructors and peers. In fact, expert learners keep asking different peers and instructors until they are sure they understand. Some peers and even some teachers are better than others in providing such help; expert learners find out who is good at helping and act accordingly.

Monitoring of Attention

Finally, expert learners monitor their attention even as they are focusing it using the strategies discussed above. Expert learners know that unfocused study is, generally, a waste of time because it does not produce learning. They therefore make sure that they are able to pay attention (e.g., that they are not too tired, that they do not need a study break, and that their study location is not distracting).

Appendix A to this text, the "Time Management/Self-Monitoring Log" is a tool for facilitating this self-monitoring. It allows you to record your efforts to study and the outcomes of your study efforts.

The Time Management/Self-Monitoring log contained in Appendix A and reproduced in the Workbook has been designed to help students develop self-monitoring skills and is an excellent tool for planning studying and self-monitoring the process. In fact, studies of students who have completed such forms for entire courses show that students who do so outperform those who do not at a statistically significant level. To help students begin to develop their ability to use the log to self-monitor their learning, Exercise 7-2 in the Workbook directs student to fill out the log for the reading in the next chapter dealing with the reflection phase of the SRL cycle.

Reflection Questions

1. For each of the four techniques for focusing attention, explain why that technique helps learners to focus their attention.
2. Why is self-monitoring so crucial for expert learning?
3. Recall a learning experience that did not go as well as you would have liked. Was there a point in time before you received your grade when you knew things were not going well?
4. If your answer to the above question is "yes," how did you know? Why were you unable to address the issue(s) productively?
5. If your answer to the above question is "no," why do you think you were unaware that you were having a learning difficulty?
6. Why is monitoring for help seeking so important to success in law school?

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Chapter 8

The Reflection Phase of the SRL Cycle

The reflection phase of the self-regulated learning cycle is the analytical phase of the cycle. Once expert learners complete the learning task during the performance phase, they reflect upon the experience. They analyze what they did, how they did it, how well they did it, why they did as well as they did, how they feel about how they did and how they will do things even better in the future. Like the forethought phase, it is easy to contemplate omitting the reflection phase but erroneous to do so. It can be easy to contemplate omitting this phase because the learning task is over at this point, and the learner, already anticipating the next learning task, may want to move on.

Studies of expert learners have found that this phase is a crucial prerequisite to successful future learning tasks. This phase creates the foundation upon which students invoke self-efficacy in the future. During the self-reflection phase, expert learners both develop data about their learning outcomes and figure out the causes of those outcomes in terms of their strategy selections. Thus, the reflection phase reinforces expert learners' sense that learning is a matter of planning, strategic choice and persistence rather than a matter of innate ability. In fact, in a series of studies, researchers taught students that their success was a matter of strategy selection and persistence, rather than aptitude. The control groups for these studies received no such instruction. The researchers found that the students who had been taught that success was a matter of persistence and strategy selection consistently outperformed the students in the control groups.

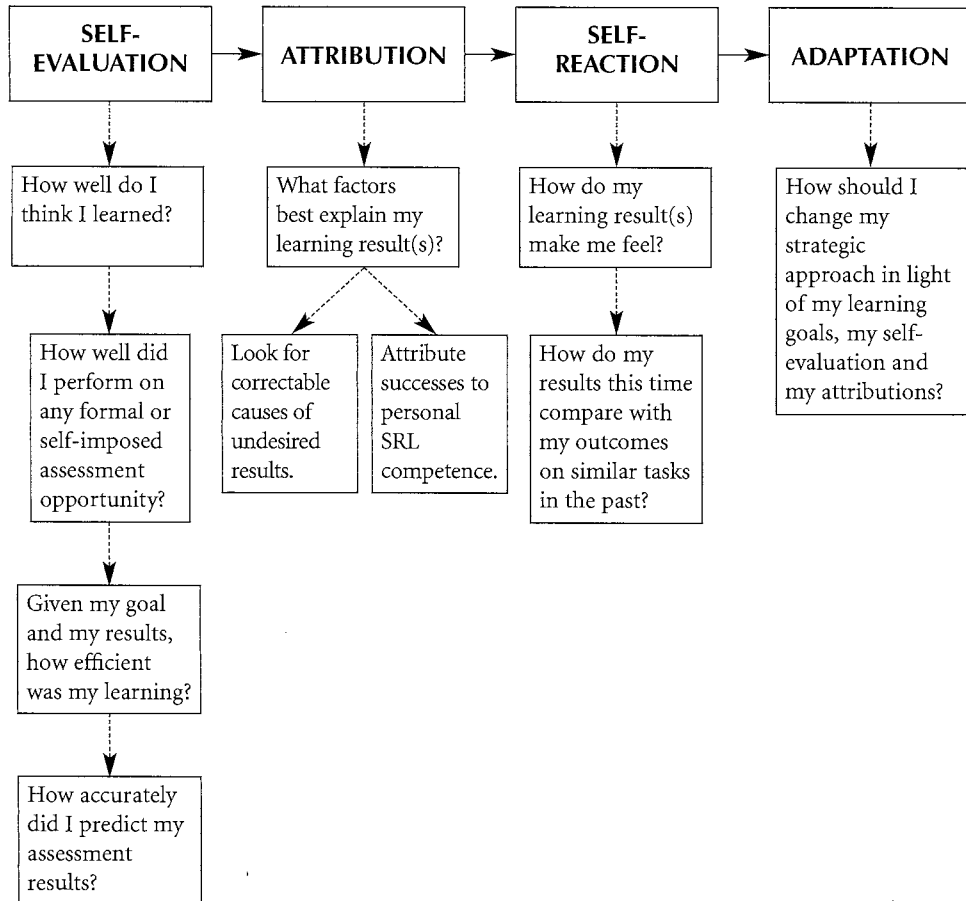
Moreover, during the reflection phase, students plan how, for future similar learning tasks, they will modify their cognitive, environmental and motivational strategies based on their learning outcomes. Students weigh how well they learned and how quickly they learned and then modify their approaches to improve efficacy and efficiency. Thus, the reflection phase will play a large role in determining the success or failure of future learning endeavors. In fact, as the constructivist model of human learning suggests, students only really become experts as learners when they take full control over their own learning process, devising learning strategies that make sense for their particular set of preferences and understandings.

The reflection phase consists of four tasks: **self-evaluation**, **attribution**, **self-reaction** and **adaptation**, each of which is described in detail below. This phase is similar to the forethought phase in the sense that it is a linear process, in which the learner moves from task to task, using information developed during a prior task to perform the next task. Two aspects of this phase are important to recognize at the outset. First, because SRL is a cyclical process, the reflection phase inevitably leads the learner back to the

forethought phase. Second, some academic tasks require multiple cycles through the three phases of SRL as you work towards developing the requisite level of mastery and identifying the best strategy or set of strategies.

Figure 7 below depicts this sequence and identifies the questions implicated by each step.

Figure 7: The Four Steps of the Reflection Phase of the SRL Cycle



Self-Evaluation

How well do I think I learned?

How well did I perform on any formal or self-imposed assessment opportunity?

Given my goal and my results, how efficient was my learning?

How accurate was my self-perception as a predictor of my performance?

One of the easiest ways to distinguish expert learners from novices is in terms of their efforts at self-evaluation. Expert learners evaluate their learning frequently, in multiple ways, objectively and according to explicit criteria. On the other hand, novice

learners evaluate their learning seldom, in no more than one way, based only on subjective beliefs and not according to any particular criteria. These differences influence all of the other steps of the reflection phase, enhancing the expert learners' sense of empowerment and efficacy (as they figure out the causes of their successes and failures, celebrate their successes and determine how to correct any failures) while contributing to the naïve learners' feelings of discouragement and powerlessness.

Expert learners assess their learning experiences in four ways: (1) internally, on their own; (2) externally, through formal or self-imposed assessment events; (3) according to their own criteria, by weighing their outcomes against their goals and the time and effort the learning required; and (4) reflectively, by comparing their predicted outcomes with their actual outcomes.

Internal Evaluation: How Well Do I Think I Learned?

Expert learners begin their self-evaluations with an internal assessment. They ask themselves whether they have achieved their learning goals, whether they have mastered the material. This evaluation is really the only one possible in real world contexts, such as the practice of law, making it particularly crucial that you learn to accurately evaluate your learning. In fact, internal self-evaluation is one of the techniques used by expert practicing attorneys to help them avoid malpractice. Expert attorneys know when they know something and, more importantly, they know when they do not know. This knowledge guides expert practitioners in how they practice law, informing many decisions, such as decisions about which cases to take and which to reject, decisions as to when to ask for help with a client's problem and when to keep struggling to figure it out, and decisions as to when to do more research and when the research process is complete.

External Evaluation: How Well Did I Perform on Any Formal or Self-Imposed Assessment Opportunity?

Studies have found a significant difference between expert learners and their peers with respect to external evaluation. Expert learners seek out opportunities for external evaluation. They take practice tests, for example, whenever it is possible to do so and they request professorial or peer evaluation of their efforts or they evaluate their efforts themselves. Expert learners are the students who choose to take the optional tests and do the optional exercises. Novice learners, in contrast, miss these opportunities or even consciously try to avoid them because they fear poor results, may not see the value in such activities or are overconfident.

Because new law students are working to acquire new skills, opportunities for practice and feedback are crucial to their success. Opportunities for such practice and feedback are available from many different sources. Many law schools provide students with copies of past essay exams and answers. In addition, the common law school practice of forming study groups creates opportunities for peer testing and feedback. Finally, students can test themselves.

Criteria-Based Evaluation: Given My Goal and My Results, How Efficient Was My Learning?

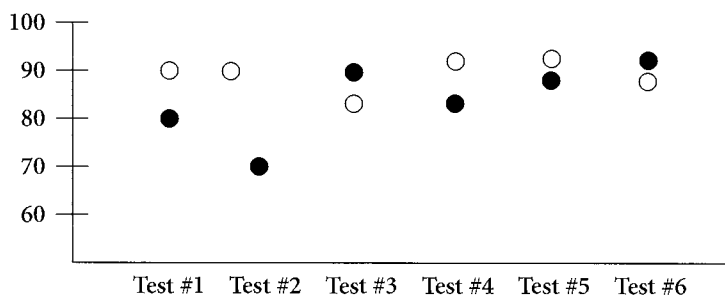
At this stage of the self-evaluation process, the learner weighs the degree to which her results suggest she has achieved her goals against the time and effort she used in implementing her learning strategy. An optimal set of learning strategies (environmental, motivational and cognitive) not only produces learning, but also is as efficient as possible. Because law students, like everyone else, only have a limited amount of time, they need to assess their learning strategies not only for whether they produced optimal learning but also for whether the strategies caused the student to learn the material as quickly as possible. In this sense, expert learners act as their own efficiency experts.

Reflective Evaluation: How Accurately Did I Predict My Assessment Results?

Finally, expert learners self-evaluate by reflecting on the accuracy of their internal self-assessment. Because, as explained above, internal self-evaluation is such a crucial skill for practitioners in all fields, expert learners use reflective evaluation to help them fine-tune their self-assessment skills.

One technique that can be particularly effective in helping students build their self-assessment skills is for students to graph their outcome predictions against their actual outcomes. Figure 8 below depicts a fictional version of such a graph in which, for each exam, the student records both her predictions (light gray) and her outcomes (black). The student records a prediction as to the student's performance before taking the test and then records the actual results after the test and then reflects on the reasons why the two are different.

Figure 8: Example of How to Graph Predicted Outcomes against Actual Outcomes



Note that, by graphing the predictions and outcomes together, the student gets a visual sense of when her predictions are far off and can visually see as her predictions become more accurate over time.

Exercise 8-1 in the Workbook provides an opportunity for you to practice your self-evaluation skills.

Attribution

What factors best explain my learning result(s)?

Look for correctable causes of undesired results. Attribute successes to personal SRL competence.

Attributions are students' explanations as to the cause(s) of their learning results. Having achieved or failed to achieve a learning goal, the student tries to understand the causes of this outcome. Expert learners attribute their successes to personal learning competence, to their successful and persistent implementation of their learning strategies, and they attribute their failures to correctable causes, such as errors in strategy selection, implementation errors or insufficient practice. Novices, in contrast, attribute their successes and failures to ability.

These differences explain why attributions are important to law school success: attributions greatly influence persistence. Some learning tasks, particularly tasks that involve the development of high-level intellectual skills (such as legal analysis) require multiple SRL cycles to develop mastery. Like learning to play a sport or a musical instrument, learning to perform legal analysis often involves multiple instances of meager learning results. Because novices believe successes and failures are caused by ability, they are likely to give up and stop trying if they fail to learn on the first try. In contrast, expert learners, who recognize that their failures are due to correctable causes and expect that some learning tasks will require many SRL cycles, persevere and, eventually, learn.

Novices' attributions of success to personal competence do not ultimately serve them well. There is some evidence that novices' ability-based attributions lead to over-confidence or failures to study; the novices see great effort as unnecessary. Expert learners' attributions of success to personal SRL competence, on the other hand, help them create a cycle of positive and dedicated learning efforts.

There is no real magic to making attributions in the sense that at least a part of the process involves self-perception and attitude. Learners must choose to make the proper attributions. The more difficult task is making accurate attributions, because accuracy helps ensure that future learning efforts succeed. The keys are reflection and brainstorming.

First, learners need to give themselves time to reflect on their just-completed learning process. They need to re-trace their learning process from its inception, looking for errors and inefficiencies. They need to consider the difficulty of the learning task and the possibility that they did not learn simply because the task necessitates cycling through several or even many attempts to learn.

Second, learners need to brainstorm the possibilities. Human error is just as much a part of the learning process as it is of anything else in life. Each phase of the SRL cycle involves possibilities for miscalculation. At the same time, as noted above, some failures to learn are inevitable given the nature of the learning task. Consequently, learners need

Figure 9: Checklist of Possible Causes of Failures to Learn

<p>Possible problems in the forethought phase</p> <ul style="list-style-type: none"> — Failure to set appropriate goal (learner set no goal or set improper one) — Incorrect assessment of the learning task (learner erroneously classified the task) — Failure to invoke self-efficacy (learner failed to identify past success in similar learning enterprises) — Failure to develop intrinsic interest in the learning task (learner did not determine why he or she needed to learn the material) — Poor motivational strategy choices (learner could not stay motivated) — Poor environmental choices (learner made bad location, timing, rest sequence choices) — Poor cognitive strategy choices (the strategy choices proved unsuited to the learning task or the learner should have used additional strategies) <p>Possible problems in the performance phase</p> <ul style="list-style-type: none"> — Incorrect implementation of strategy choices (the learner incorrectly used the strategies) — Failure to maintain focused attention (learner was unable to focus during implementation) — Failure to self-monitor (learner failed to recognize a breakdown in the learning process while it was ongoing) — Insufficient persistence (learning task simply requires multiple learning cycles) <p>Possible problems in the reflection phase</p> <ul style="list-style-type: none"> — Failure to pursue opportunities for self-assessment (student did not take advantage of or create opportunities for practice and feedback) — Inaccurate self-assessment (student incorrectly assessed how well she learned)
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to review their process with a checklist of possible causes in mind, such as the checklist in Figure 9 above.

Exercise 8-2 in the Workbook will allow you to use Figure 9 to develop attributions about a past learning experience.

Self-Reaction

How do my learning results make me feel about myself?

How do my results this time compare with my outcomes on similar tasks in the past?

Because this step is inevitable for nearly all learners, it is considered a part of the process. For example, having attributed a failure to learn either to ability or to correctable causes, the learner considers what those results mean on a personal level. Because expert learners have not attributed the failure to a lack of ability, they experience no negative self-reaction. Novice learners, however, perceive failures to learn as personal defeats, as saying something about their intelligence or capacity to learn. As a result, expert learners retain their sense of self-efficacy, regardless of their outcomes,

whereas novices' self-efficacy is outcome-dependent and therefore considerably more vulnerable. In fact, there is some evidence that learners transfer this sense of agency or lack thereof, of control over their environment or of lack of control, outside the learning context. Expert learners usually tend to perceive themselves as able and competent, whereas novice learners often do not.

One way for learners to facilitate a positive self-reaction is to compare their outcome on the task at hand with their outcome on past, similar tasks. If the learner has failed to learn what he or she needed to learn but can point to a past success, the learner is more likely to react to this result positively and with confidence about a long-term resolution. Even if the learner can only point to past failures to learn similar materials, this comparison can allow the learner to see improvement, to recognize the progress he or she has made towards achieving her goals. Exercise 8-3 in the Workbook provides an opportunity for you to reflect on your self-reaction to a successful learning experience you have had and to an unsuccessful learning experience you have had.

Adaptation

How should I change my strategic approach in light of my learning goals, my self-evaluation and my attributions?

The adaptation step is, perhaps, the most constructivist aspect of the SRL cycle. Ultimately, you are the expert in your own learning. You are in the best position to figure out the causes and the solutions for failures to learn or inefficiencies in the learning process. However, it is much easier to make learners aware of the need to engage in this process than to explain how to do it.

There are, however, three characteristics of good adaptations. First, good adaptations are tied to the student's original learning goals. The goals set the standards by which the learner measures her performance during self-monitoring and self-evaluation. Consequently, the goals also set the standard at which the learner is aiming through her modifications of her learning approach.

Second, good adaptations reflect the learner's self-evaluation of her learning. While excellence is a worthy aspiration, perfection is not. In many instances, there is no failure to learn at all and therefore no need for adaptation. In many others, the learner has not fallen very far short of her learning goals and therefore a major overhaul is unnecessary. If the learning deficiency is a small one, only a small adjustment is appropriate. In still other situations, the issue is one of efficiency, not effectiveness, and again only small adjustments may be in order.

Finally, good adaptations are systematic. Rather than changing every aspect of the learning process after a failure, expert learners know that they may need several SRL cycles to master a difficult learning task. Consequently, expert learners make smaller adjustments (unless the whole process went wrong from the outset), planning to adjust their approaches as they develop more information and practice their new skills more. Exercise 8-4 in the Workbook addresses the development of your adaptation skills.

Conclusion: Completion of the Reflection Phase— On to the Next Forethought Phase

As the foregoing discussion reflects, learning, whether it is self-regulated or not, requires persistence, thoughtfulness and a high degree of motivation. Expert learners possess this motivation because they know they will eventually learn. As they cycle through the reflection phase, they anticipate the forethought phase, developing self-efficacy and strategic plans that will influence how they go about the performance phase. For this reason, the degree to which students engage in self-regulated learning determines, ultimately, not only whether learning occurs, but also, whether the learner enjoys the process and sees the learning experience as a positive or a negative one. SRL allows students to command their own learning and to ensure that they achieve the goals that led them to enter the academic enterprise in the first place.

Reflection Questions

1. How does the reflection phase influence the forethought and the performance phases?
2. Many novice learners never engage in any of the behaviors described in this chapter. Why do novice learners avoid these behaviors?
3. Have you ever engaged in the behaviors described in this chapter? Describe what you did.
4. In what sense is the reflection phase the most self-empowering phase of the SRL cycle?

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PREPARING FOR CLASS
PROFESSORS LIZA-JANE CAPATOS³ AND NIMA SOHI⁴

Understanding and studying cases is essential to success in law school and can be very challenging. The work you do before class to make sense of and prepare to discuss the assigned cases will make-up the bulk of your homework as a law student.

In this session, Professors Capatos and Sohi will lead you through the typical ways that students prepare for class, including briefing cases. In preparation, please prepare a case brief for *McCann v. Wal-Mart Stores, Inc.*

In advance of the session, we're not going to provide extensive guidance on how to prepare a case brief. One reason for that is that every student briefs cases in a slightly different way. More importantly, we want to be able to lead you through a more directed conversation about briefing during this session. For now, there are a few key items you should be identifying in every case brief. They may sound familiar if you've done any reading (or Google-ing) about law school.

1. Your brief should identify the key **issue or issues** presented by the case. Issues are the legal questions the Court is addressing in the case opinion you're reading. When you take a law school exam, your first task is to identify the issues presented.
2. For each of the issues identified in your brief, you should find the applicable **rule**. Rules are the statement of law that the court cites to answer the question raised by the issue. Rules come from other cases, statutes, and constitutions, among other sources. The rule should be a statement – one or more sentences. Those sentences are very important because they are likely to be ones you'll include in your course outline, and memorize to use on a law school exam (and on the Bar Exam).

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3. Under each issue and rule, you'll have a brief summary of the **application** of that law to the facts of the case. This requires you to identify the facts the court thought were important, and make sense of how those facts interact with the rule to reach a conclusion.
4. And finally, you should identify that **conclusion**. State what result the court reached, and most importantly, why it reached that conclusion. Usually your conclusion, which some professors and judges call a *holding*, is the answer to the question presented in your issue statement. Like the rule statement, it should be a full sentence, and should include a "because."

It's ok if this doesn't make a lot of sense to you right now. Try it out and bring your work to this session. Professors Capatos and Sohi will lead you through how to brief a case and talk more broadly about how to prepare for your classes next week.

Debra McCANN
v.
WAL-MART STORES, INC.

United States Court of Appeals,
First Circuit.

210 F.3d 51 (2000)

BOUDIN, Circuit Judge.

This case involves a claim for false imprisonment. On December 11, 1996, Debra McCann and two of her children—Jillian, then 16, and Jonathan, then 12—were shopping at the Wal-Mart store in Bangor, Maine. After they returned a Christmas tree and exchanged a CD player, Jonathan went to the toy section and Jillian and Debra McCann went to shop in other areas of the store. After approximately an hour and a half, the McCanns went to a register and paid for their purchases. One of their receipts was time stamped at 10:10 p.m.

As the McCanns were leaving the store, two Wal-Mart employees, Jean Taylor and Karla Hughes, stepped out in front of the McCanns' shopping cart, blocking their path to the exit. Taylor may have actually put her hand on the cart. The employees told Debra McCann that the children were not allowed in the store because they had been caught stealing on a prior occasion. In fact, the employees were mistaken; the son of a *different* family had been caught shoplifting in the store about two weeks before, and Taylor and Hughes confused the two families.

Despite Debra McCann's protestations, Taylor said that they had the records, that the police were being called, and that the McCanns "had to go with her." Debra McCann testified that she did not resist Taylor's direction because she believed that

she had to go with Taylor and that the police were coming. Taylor and Hughes then brought the McCanns past the registers in the store to an area near the store exit. Taylor stood near the McCanns while Hughes purportedly went to call the police. During this time, Debra McCann tried to show Taylor her identification, but Taylor refused to look at it.

After a few minutes, Hughes returned and switched places with Taylor. Debra McCann told Hughes that she had proof of her identity and that there must be some proof about the identity of the children who had been caught stealing. Hughes then went up to Jonathan, pointed her finger at him, and said that he had been caught stealing two weeks earlier. Jonathan began to cry and denied the accusation. At some point around this time Jonathan said that he needed to use the bathroom and Hughes told him he could not go. At no time during this initial hour or so did the Wal-Mart employees tell the McCanns that they could leave.

Although Wal-Mart's employees had said they were calling the police, they actually called a store security officer who would be able to identify the earlier shoplifter. Eventually, the security officer, Rhonda Bickmore, arrived at the store and informed Hughes that the McCanns were not the family whose son had been caught shoplifting. Hughes then acknowledged her mistake to the McCanns, and the McCanns left the store at approximately 11:15 p.m. In due course, the McCanns brought suit against Wal-Mart for false imprisonment....

The jury awarded the McCanns \$20,000 in compensatory damages on their claim that they were falsely imprisoned in the Wal-Mart store by Wal-Mart employees. Wal-Mart has now appealed the district court's denial of its post-judgment motions for judgment as a matter of law and for a new trial pursuant to Fed.R.Civ.P. 50(b) and 59, respectively, arguing that the McCanns did not prove false imprisonment under Maine law....

Both of Wal-Mart's claims of error depend on the proper elements of the tort of false imprisonment. Although nuances vary from state to state, the gist of the common law tort is conduct by the actor which is intended to, and does in fact, "confine" another "within boundaries fixed by the actor" where, in addition, the victim is either "conscious of the confinement or is harmed by it." *Restatement (Second), Torts* § 35 (1965). The few Maine cases on point contain no comprehensive definition, see *Knowlton v. Ross*, 114 Me. 18, 95 A. 281 (1915); *Whittaker v. Sandford*, 110 Me. 77, 85 A. 399 (1912), and the district court's instructions... seem to have been drawn from the *Restatement*.

While "confinement" can be imposed by physical barriers or physical force, much less will do-although how much less becomes cloudy at the margins. It is generally settled that mere threats of physical force can suffice, *Restatement, supra*, § 40; and it is also settled-although there is no Maine case on point-that the threats may be implicit as well as explicit, see *id.* cmt. a; 32 Am.Jur.2d *False Imprisonment* § 18 (1995) (collecting

cases), and that confinement can also be based on a false assertion of legal authority to confine. *Restatement, supra*, § 41. Indeed, the *Restatement* provides that confinement may occur by other unspecified means of “duress.” *Id.* § 40A.

Against this background, we examine Wal-Mart’s claim that the evidence was insufficient, taking the facts in the light most favorable to the McCanns, drawing reasonable inferences in their favor, and assuming that the jury resolved credibility issues consistent with the verdict. See *Gibson v. City of Cranston*, 37 F.3d 731, 735 (1st Cir.1994); *Sanchez v. Puerto Rico Oil Co.*, 37 F.3d 712, 716 (1st Cir.1994). Using this standard, we think that a reasonable jury could conclude that Wal-Mart’s employees intended to “confine” the McCanns “within boundaries fixed by” Wal-Mart, that the employees’ acts did result in such a confinement, and that the McCanns were conscious of the confinement.

The evidence, taken favorably to the McCanns, showed that Wal-Mart employees stopped the McCanns as they were seeking to exit the store, said that the children were not allowed in the store, told the McCanns that they had to come with the Wal-Mart employees and that Wal-Mart was calling the police, and then stood guard over the McCanns while waiting for a security guard to arrive. The direction to the McCanns, the reference to the police, and the continued presence of the Wal-Mart employees (who at one point told Jonathan McCann that he could not leave to go to the bathroom) were enough to induce reasonable people to believe either that they would be restrained physically if they sought to leave, or that the store was claiming lawful authority to confine them until the police arrived, or both.

Wal-Mart asserts that under Maine law, the jury had to find “actual, physical restraint,” a phrase it takes from *Knowlton*, 95 A. at 283; see also *Whittaker*, 85 A. at 402. While there is no complete definition of false imprisonment by Maine’s highest court, this is a good example of taking language out of context. In *Knowlton*, the wife of a man who owed a hotel for past bills entered the hotel office and was allegedly told that she would go to jail if she did not pay the bill; after discussion, she gave the hotel a diamond ring as security for the bill. She later won a verdict for false imprisonment against the hotel, which the Maine Supreme Judicial Court then overturned on the ground that the evidence was insufficient.

While a police officer was in the room and Mrs. Knowlton said she thought that the door was locked, the SJC found that the plaintiff had not been confined by the defendants. The court noted that the defendants did not ask Mrs. Knowlton into the room (another guest had sent for her), did not touch her, and did not tell her she could not leave. The court also said that any threat of jail to Mrs. Knowlton was only “evidence of an intention to imprison at some future time.”^[1] *Knowlton*, 95 A. at 283. In context, the reference to the necessity of “actual, physical restraint” is best understood as a reminder that a plaintiff must be actually confined—which Mrs. Knowlton was not.

Taking too literally the phrase “actual, physical restraint” would put Maine law broadly at odds with not only the *Restatement* but with a practically uniform body of common law in other states that accepts the mere threat of physical force, or a claim of lawful authority to restrain, as enough to satisfy the confinement requirement for false imprisonment (assuming always that the victim submits). It is true that in a diversity case, we are bound by Maine law, as Wal-Mart reminds us; but we are not required to treat a descriptive phrase as a general rule or attribute to elderly Maine cases an entirely improbable breadth.

Affirmed.

^[1] Although the distinction may seem a fine one, it is well settled that a threat to confine at a future time, even if done to extract payment, is not itself false imprisonment. See *Restatement, supra*, § 41 cmt. e.

HOMEWORK FOR NEXT WEEK

In law school, students typically have a reading assignment due on the first day of class. Our professors will begin posting those first assignments during the Orientation week. To find those assignments:

- Log onto Camino, Santa Clara’s course management system: <https://www.scu.edu/login/>
- Check your @scu.edu email for a message from your professor or his/her faculty assistant.

Professors post assignments up to the day of your first class, so check back frequently.