

# THE LEARNING CURVE

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## Letter from the Editors

Dear colleagues,

This space is typically reserved for some insightful words on the content of this particular issue of *The Learning Curve*. As things stand today, such commentary is honestly something I find quite challenging. Therefore I am going to take this opportunity to do something else.

I want to send my best wishes to all of you out there. I hope you, your families, and your loved ones are staying safe and healthy. That should be our priority right now.

Operating in the time of a global pandemic creates all sorts of challenges and problems that are difficult to handle, so I hope that in addition to helping our students, you are taking time to help yourself.

It has been inspiring to see so many of you out there offering help and insight to each other as we try to do our best to move forward. Thank you to you all.

Our next issue will focus on some of these insights, but for now I offer you several articles written before the outbreak of Covid-19. Maybe it can remind us all of how things used to be, and how things will look once this all passes.

Kevin Sherrill  
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## Teach Me What You've Learned: A Classroom Technique for Repeated Spaced Retrieval

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Why is it so difficult for some students to absorb legal principles? Scientists have found that unless we have a framework of knowledge it is very difficult to consolidate novel information. Once we get a framework, then novel information can be quickly assimilated.

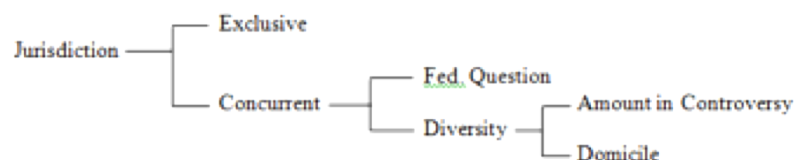
Consider for example a seasoned constitutional law professor versus the student brand-new to the area of constitutional law. If new information is encountered, such as a recent Supreme Court holding, the law professor has no trouble holding onto it and assimilating it into a larger base of knowledge. For the law student, by contrast, the information literally has nowhere to go in the brain. The difference between the two is that the law professor has learning frameworks, called schemas, already assimilated. As a result the new information fits easily into the existing framework. The law student, by contrast, must first develop an appropriate learning framework in order to be able to hold on to the information about constitutional law. As King and colleagues (2019) state, "Novel information is learned faster if it is compatible with existing knowledge, a result that is achieved via the integration of new information into the previously acquired memory."

*"Novel information is learned faster if it is compatible with existing knowledge, a result that is achieved via the integration of new information into the previously acquired memory."*

Then how do we acquire a learning framework? The answer is through retrieval and repetition. As Karpicke notes, although it's long been known that retrieval contributes to learning, the past decade has seen an intense focus on the benefits of repeated retrieval. Such retrieval, the process of attempting to recall previously learned information, has been shown to enhance learning in a variety of settings and contexts for individuals ranging in age from preschool into later adulthood (Karpicke, 2016).

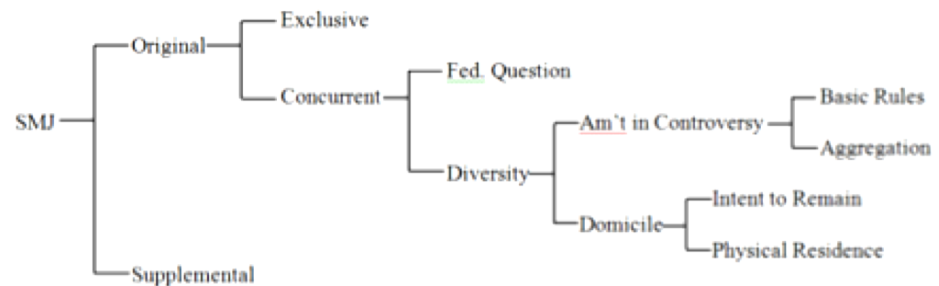
In this article we illustrate a technique that capitalizes on the principles of learning frameworks and repeated retrieval. The technique involves facilitating the development of learning frameworks in students who are new to a subject. Consider for example a hypothetical day following a Civil Procedure I session. We begin our class by asking the students to tell us what they have learned. One says, "federal question jurisdiction," so we write this term on the board. Another says, "diversity jurisdiction"; and yet a third says, "exclusive jurisdiction and concurrent jurisdiction." We write these terms on the board and see if we can get the class to give us even more. One may then say, "domicile" and another, "amount in controversy."

We then ask the students to help us organize the information. In so doing we are attempting to create a learning framework based on the students' new learning. For example, we may guide the students to see a structure that might look something like the following:



In our next class session, we ask the students to try to recall, that is retrieve, the schema that was created last time. Thus the process of repeated retrieval begins. From there we again ask the students to tell us what they learned since the last time we met. We write the terms down and then help the class integrate them into the existing framework. For example, one may say “more than \$75,000.” Another may say “intent to remain and supplemental jurisdiction” and yet another “physical residence and original jurisdiction.” Finally, someone might add “aggregation and subject matter jurisdiction.”

For many students, each of these terms represents an isolated concept because they fail to do the crucial task of organizing an accurate framework. What we try to do is guide the class to expand their developing framework. For example, through discussion we might piece it together as follows:



To get a better idea of schemas and how they work, consider the early work of Swiss psychologist Jean Piaget. For Piaget, cognitive development begins with an inborn tendency to organize experiences into meaningful patterns, which he called schematic (singular—schema.) A schema is an organized pattern of thought. According to Piaget, schemata can be acquired or modified in 2 ways. The learner might integrate new experiences into an existing schema, a process called assimilation. Or using the process of accommodation, the learner might develop a new schema or modify an existing one (Saccuzzo, 1987).

For example, the mind of a newborn might be considered a blank slate beginning with a single schema which represents the infant's entire experience. As the infant assimilates new information into this initial schema, she or he eventually develops a new schema for everything involving the infant's perception of self. At this point, the infant has 2 schemas - one for experiences of the world and one for self-perception, or the concept of “me”. Subsequently, the schema for all information involving the outside world must give way to new schemas, such as things that fly. Later, the schema for things that fly its further refined into birds and other winged creatures versus inanimate objects such as airplanes.

The process of schema formation continues throughout the lifespan. Their importance and relevance can be seen in the power first impressions and what are called primacy effects. One of the reasons first impressions are so powerful is that they create a schema that then colors subsequent perceptions. Similarly, primacy effects mean that what we see first tends to be better remembered. This process even applies to essay grading. Graders quickly form a schema that tells them this is either a good, average, or okay answer. Subsequently, the graders' perceptions are colored by this initial impression, and a search for evidence to confirm their initial impressions.

Over 100 years of research have demonstrated that retrieval is one of the best, if not the best, ways of learning (Karpicke, 2016). Retrieval followed by spaced repetition leads to the development of schemas. Once consolidated, the schema becomes a part of what psychologists call semantic memory. Thereafter, new information on the same subject as the schema is more readily and efficiently assimilated. For example, on the question of when to study the minutia of the MBE, we recommend to students that they first learn the basic core of the subject before trying to learn the more obscure rules. Once a schema for this core is acquired, the minutia is more easily learned. This is one reason why during review for final exams and during bar review each succeeding day seems to go by faster. They do go by faster, because speed of learning accelerates as schemas are acquired.

These concepts also apply to solving closed universe problems such those that are typically included in a 1L skills or writing course or any closed universe performance exam. For all of these types of problems we recommend that students attempt to abstract and create a schema for the structure of the law presented in the library. This schema then provides the structure that can then be used to analyze the questions asked in the performance test.

Using this approach, we guide students to take their individual case briefs and organize them into schemas that, in the end, reflect the entire core structure of the subject. In essence this is a mental representation or map of the thinking process necessary to arrive at answers to legal questions. Development of those schemas occurs through repeated spaced retrieval, and academic success professionals can fulfill a vital role in guiding students to do this work.

Advantages of our schema-building exercise are:

1. It demonstrates the process of schema formation to students.
2. It guides students through the process of repeated retrieval.
3. It helps academic success professionals to identify students struggling to develop the structure or needing individual help.
4. It helps illustrate for students the value of the academic success classes by providing a tangible work product that, in our experience, students share with others.
5. can be an effective mechanism for providing feedback to the students' substantive law professor about common areas of confusion in the class.

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# The Science of Willpower and Exercising Power Over Your Will

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This community understands that the successful study of law requires the exercise of willpower—sometimes more than a student seemingly has. How can we help students harness their willpower and use it effectively?

“Willpower” is actually a form of self-control, or self-regulation.<sup>1</sup> While “self-control” is typically used in the context of refraining from doing something (e.g., not eating a brownie), it also governs the act or process of forcing ourselves to do something, particularly something undesirable (e.g., eating more kale instead of the brownie), while “losing” self-control is typically associated with giving in to something we should not do (e.g., eating a second brownie). In the context of law school, self-control might refer to the decision to not start a new Netflix series during a lunch break or to study one more hour instead of binge-watching a new show, while losing self-control might refer to giving in to binge-watching a show during lunch and turning the lunch break into an all-afternoon break. One of the essential jobs of an academic support professional is helping students understand how willpower functions and how they can regulate it.

## The Science Behind Willpower

In 1998, Roy F. Baumeister and his colleagues at Case Western University published a landmark study on self-control, finding that willpower is a limited resource.<sup>2</sup> The theory posits that, in any given day, we have a finite supply of willpower: as we expend willpower throughout the day, we exhaust our supply, thereby diminishing our ability to make difficult choices (or self-regulate) as the day proceeds.<sup>3</sup> Although this is the prevailing theory, it is not a settled one. In the years since, there have been many studies that have either corroborated or refuted the theory that willpower is a finite resource, while other new theories and studies about how willpower functions have emerged. One more recent idea is that willpower acts as a muscle that can become fatigued<sup>4</sup>, while another suggests that willpower acts as an emotion<sup>5</sup>.

Each theory agrees, however, that the exercise of willpower is not constant: some tasks or choices require greater self-control than others, while some tasks require exponentially more willpower at one time of the day than another. For example, it may require more willpower to take a performance test than to answer a set of multiple choice questions, and it may take more willpower to do a performance test in the afternoon than it would have to do it in the morning<sup>6</sup>. The more willpower we must exercise, the less we have to access later. Accordingly, willpower must be consciously nurtured if it is to be exercised and managed effectively. Fortunately, the process of managing willpower is essentially the same across all theories.

Imagine a student taking a break by watching their favorite show on a streaming platform such as Netflix. Netflix, like most streaming platforms, automatically plays subsequent episodes. If willpower is considered a limited resource, the act of consciously ending or stopping the next episode—pressing stop, closing the app, etc.—demands an exercise of self-control; when the show is one of your favorites, turning it off to resume a less desirable task, such as outlining joinder or making sense of the rule against perpetuities, demands an even greater expenditure of willpower.

<sup>1</sup> When discussing “self-control,” “[t]he folk notion of willpower is not far off the mark” and “is largely synonymous with ‘self-regulation,’ a term preferred by many researchers because of its greater precision.” Roy F. Baumeister, *Self-control – the moral muscle*, *The Psychologist*, available at <https://thepsychologist.bps.org.uk/volume-25/edition-2/self-control-%E2%80%93-moral-muscle> (last visited May 11, 2020).

<sup>2</sup> They called this phenomenon “ego depletion.” See generally Roy F. Baumeister et al., *Ego Depletion: Is the Active Self a Limited Resource?*, in 74 *J. of Personality & Soc. Psych.* 1252 (1998), available at [https://faculty.washington.edu/jdb/345/345%20Articles/Baumeister%20et%20al.%20\(1998\).pdf](https://faculty.washington.edu/jdb/345/345%20Articles/Baumeister%20et%20al.%20(1998).pdf).

<sup>3</sup> Nir Eyal, *This Myth about Willpower is Holding Back Your Productivity*, in *Fast Company* (Nov. 28, 2016), available at <https://www.fastcompany.com/3065981/this-myth-about-willpower-is-holding-back-your-productivity> (last visited May 11, 2020).

<sup>4</sup> American Psychological Association, *What You Need to Know About Willpower: The Psychological Science of Self-Control*, available at <https://www.apa.org/helpcenter/willpower.pdf>.

<sup>5</sup> See generally Michael Inzlicht, Research, <http://michaelinzlicht.com/research/> (last visited May 11, 2020).

<sup>6</sup> There are many inputs and dynamics that can impact the use of willpower, including anxiety and deadlines, but the focus here is limited to the exercise of willpower itself.

If willpower is limited, that increased expenditure depletes that resource more quickly, leaving the student with less willpower to outline longer, read a case a second time, make sense of a particularly dense passage, push to study another hour, and so on. Students may feel they need a limitless supply of self-control to be successful in law school, but if self-control is an inherently limited resource, every extraneous expenditure has real cost.

If willpower is a muscle, the impact is virtually identical: detaching from something that floods our brains with dopamine—like watching Jim’s pranks<sup>7</sup> or babies-eating-lemons videos—requires us to flex that willpower/self-control muscle more vigorously. This causes muscle (willpower) fatigue, and we lose the ability to do heavy lifting as the day wears on.

The third theory speculates that willpower functions like an emotion<sup>8</sup> in that we do not run out of willpower any more than we run out joy or anger, but that willpower itself is a dependent emotion that increases or wanes in correlation to how we feel about what we are faced with.<sup>9</sup> Accordingly, our ability to exercise self-control is not limited by capacity; rather, it is a function of motivation.<sup>10</sup> One upside to this theory, if it proves correct, is that willpower would not be a limited resource that can be depleted; rather, a person’s lack of motivation can be managed and might be only temporary, especially if the emotion is handled properly.

Positive emotions are those that result from a pleasurable experience and require little effort or focus; conversely, “negative emotions require more cognitive resources to be allocated for dealing with the given situation.”<sup>11</sup> While emotions are often categorized as one or the other, research—and human experience—tells us that some emotions are both, or that experiencing an emotion on one end of the spectrum can have consequences on the other. For example, graduation may be both happy and sad, or anger can have a positive impact on performance while happiness can result in apathy.<sup>12</sup>

The exercise of willpower, if it is an emotion, can also be both positive and negative: when properly motivated, willpower can feel positive and less strenuous (e.g., positive results after working out may make a person more willing or eager for future workouts), while having to perform a task we are less *emotionally* motivated to do will make the exercise of willpower more challenging (e.g., logically understanding that outlining is essential to understanding but being intellectually paralyzed at where to start, creating an emotional response of lack of willpower). While the former is ideal, the exercise of willpower more often falls to the latter. Further, expending willpower is effectively a deprivation of what we want, either because it is something we should not do or have (e.g. an extra brownie), or because there is something better for us that we should do or have instead (e.g. fresh fruit instead of the brownie). In either scenario, in that instant, the expenditure of willpower feels like a deprivation and does not, by itself, result in immediate joy. Although the consequence of expending willpower may result in positive emotions when the desired goal is achieved, that delayed gratification is often of little help in the moment. Further, experiencing the perceived deprivation in that moment can fuel other negative thoughts and emotions, all contributing to emotional (willpower) fatigue.

A student’s lack of motivation or willpower can also be instructive as to other emotions, or even cognitive dissonance, that the student might be struggling with. A student may struggle with willpower because of an issue with the material. Intellectual challenges in law school often generate feelings of inadequacy or imposter syndrome, as well as stress, anxiety, and depression. When students know they do not understand something, like estates in land, they generally want to avoid it and, therefore, must use more willpower to address it. Being aware of the underlying emotional issues of why a person may feel less inclined to do specific types of work is critical to being able to manage them.

Additionally, the willpower-as-an-emotion theory states that willpower is also dependent on other emotions<sup>13</sup>. The stress of law school often generates anxiety in students that can be overwhelming, feeding other negative emotions, and even parallel depressive episodes: students may be overwhelmed by everything they must do or when faced with challenging material; they may believe they are the only ones struggling so much and feel isolated from their peers; they may detach from their classmates so no one will realize how much they are struggling; they may become angry with themselves for working so hard but feeling like they have not gained sufficient understanding or improvement in their learning;

<sup>7</sup> For those that would like to experience the dopamine released while watching Jim’s pranks, and the requisite self-control necessary to stop watching and return to work, please see [https://theoffice.fandom.com/wiki/List\\_of\\_Jim%27s\\_pranks](https://theoffice.fandom.com/wiki/List_of_Jim%27s_pranks).

<sup>8</sup> See *supra* n. v.

<sup>9</sup> See *supra* n. iii.

<sup>10</sup> See *supra* n. v.

<sup>11</sup> Aaron Ben-Zeév, *Are Negative Emotions More Important than Positive Emotions?*, in *Psychology Today* (July 18, 2010), available at <https://www.psychologytoday.com/us/blog/in-the-name-love/201007/are-negative-emotions-more-important-positive-emotions> (last visited May 11, 2020).

<sup>12</sup> See Sieun An et al., *Two Sides of Emotion: Exploring Positivity and Negativity in Six Basic Emotions across Cultures*, in 8 *Frontiers in Psych.* 610 (2017), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5397534/>.

<sup>13</sup> See *supra* n. v.

they may become depressive and want to detach from school as a whole; they may want to dull these feelings with alcohol or drugs. All these feelings and impulses generate more negative emotions that feed on each other and consequently lead to a decrease in willpower. Unfortunately, *not* utilizing willpower can also have a detrimental effect. When students are unable to motivate and use their time effectively, they might develop a defeatist mindset, asking what is wrong with them, questioning whether they belong in law school, or creating self-fulfilling prophecies of weak performance.

Fortunately, much of what we already recommend to students is exactly what they can and should do to manage willpower or engage in self-regulation. Framing these same tools and suggestions and a method for managing willpower can reach some students in a different and powerful way.

#### How We Can Manage Willpower

Regardless of the source of willpower, its limitation is the same across all three theories: in periods of high demand (i.e., every day of law school), students may find they have less willpower, self-control, or motivation than necessary to achieve what is required. Accordingly, regardless of the underlying theory, students must employ strategies to minimize the need to access willpower in the first place so that the supply is there, the muscle is relaxed, or the emotion is primed, when the time comes to call on it.

One important strategy is to develop good habits so that studying and learning is less about drawing on willpower and more an expectation or basic function: doing the dishes can require copious amounts of willpower while brushing your teeth requires little because it is a habit. We often talk to our students about building good habits, but students can benefit from knowing the “why”: building healthy study routines and habits diminishes the exercise of willpower to perform necessary tasks. For students, that might mean keeping a regular sleep schedule; “treating law school like a job”; implementing a consistent study schedule; or building in a certain amount of practice each week. Healthy study routines also include surrounding themselves with positive influences, friends, or study groups that encourage accountability or distancing themselves from negative ones that promote socializing; breaking tasks into manageable pieces; and taking productive breaks, e.g., a walk around the block rather than scrolling Instagram. Accordingly, when willpower *must* be employed, the reserve is not exhausted, the muscle is not fatigued, or the emotion has been nurtured.

We also talk to our students about effective study strategies and skills development. We teach them how to read and brief a case, how to outline, how to analyze, how to take law school exams. When students struggle with material, we recommend strategies like breaking the material into manageable pieces, incorporating different studying tools and techniques, building in practice, and asking for help. We remind them that what helped them be successful before law school might not be the same as what they need to be successful now. These are critical strategies for success and can also be linked directly to willpower: when students employ these techniques, they not only gain understanding of the law but also confidence in their ability to be a successful law student that, in turn, generates more motivation to continue forward. We’ve seen this in our own offices while guiding a student through a hypo and witnessing their “ah-ha” moment. Helping the student understand from a skills perspective what they just did and why it was effective, and connecting it to their practice and preparation for other classes, generates motivation to move forward and try these strategies with new doctrines, requiring less willpower to do what they should— and hopefully would - have done anyway.

The emotional challenges generated in law school often mirror anxiety and depression; accordingly, it is unsurprising that many of our recommendations for these challenges mirror non-medicinal treatments for anxiety and depression: take a walk, engage in meaningful self-care, exercise, eat well, sleep well, engage with family and the community<sup>14</sup>.

When they need a break, do *not* turn on Netflix or engage in “mindless” activities that are akin to curling up on the metaphorical couch and detaching from their surroundings and stressors. While tempting, those kinds of breaks can be detrimental because returning to the studying/learning tasks that the student was taking a break from requires a greater expenditure of willpower and can actually feed the cycle of anxiety and negative thoughts or emotions when a student struggles to refocus. When students hear this framing of why they should not watch Dwight woo Angela over their lunch break, they largely nod their heads and admit that one episode inevitably turns into three, and they have a much harder time focusing when they do return to their studies. They become much more open to the suggestion that they should, instead, choose activities that allow for a break from the studying without feeding their anxieties, avoidance mechanisms, or cycle of negative emotions, which create an opportunity cost that demands more willpower to reengage with that studying.

<sup>14</sup> Because physical activity releases endorphins that trigger positive feelings, among other benefits, exercise is often medically prescribed to fight depression and anxiety and improve mood. Those struggling with depression and/or anxiety are also encouraged to develop healthy self-care routines including eating well, minimizing alcohol intake, developing good sleeping habits, and engaging in activities that are meaningful. See Cleveland Clinic, 7 Ways to Head Off Depression — Before It Sets in (Feb. 13, 2018), available at <https://health.clevelandclinic.org/7-ways-to-head-off-depression-before-it-sets-in/> (last visited May 11, 2020).

They become more open to suggestions such as walking around the block, chatting with a friend, sharing difficult feelings, planning healthy meals for the rest of the week, or meditating for a few minutes.

Recommendations like these help students maintain a positive mindset through the challenge and rigor of law school, as well as help manage motivation. In turn, the students require less willpower to engage in the requisite learning and tasks.

#### What We Do With This Information

None of these suggestions are new to anyone in this community, and we all understand that students respond better when they understand the “why.” Unfortunately, when we tell students that they should employ these suggestions “because they are good learning strategies or techniques,” they instead hear “because I told you so.” Explaining the brain science behind certain recommendations or pedagogies helps at least some students adopt the recommendations or adapt to them. While I have made these types of suggestions to my students throughout my time as an academic support professional, I ultimately found that students were more inclined to internalize those same recommendations once I began explaining the brain science supporting them, and contextualizing them in their own experiences. They began to recognize the cognitive effects I described, and realize that those experiences were not something that was happening *to* them, but rather something they could exercise control over. Sharing this information with our students arms them with information that can help them make better choices to support their learning or, at the very least, help them understand the choices they are making. Explaining the science of how something as small and as seemingly harmless as watching an episode of “The Office” during a lunch break can disrupt the rest of the day’s productivity seems to resonate deeply with students as they recall the challenge of exercising self-control to stop streaming and return to the commerce clause. They begin to consider more productive methods of taking breaks, managing their studying and motivation, and utilizing their time. Just as step-counters and nutrition apps provide information that can help people make more informed decisions about their physical health, arming our students with the science of willpower can help them make better choices regarding their academic health.

<sup>15</sup>There is at least one study that suggests that participants who learned that willpower was a limited resource reacted with less self-control when faced with the task in the study. See generally Veronika Job et al., *Beliefs about willpower determine the impact of glucose on self-control*, in 110 PNAS 14837 (2013), available at <https://www.pnas.org/content/110/37/14837.full#F1>.

## Why We Need a Better Bar Review

**Allie Robbins**

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I recently had the opportunity to speak with someone who is developing a new commercial bar review company. That conversation prompted me to ask alums via social media what they would change about their bar review courses. I received some great responses including a desire for more visual aids, outlines with time stamps so students could go back to the moment in the video lecture where a specific topic was discussed, more flexible study plans, and more condensed memorization materials.

While these were great suggestions, they seem like mere tweaks to a broken system. I have often thought that there must be a better way to do bar review. Overall, my alums asked for a more customizable bar review program that takes into account differences in both learning preferences and time available to devote to bar study. Bar review courses seem to have multiplied exponentially over the last few years with the development of new full bar programs and supplemental offerings, yet none of them focus on the 'whole' student or a diverse array of students: instead, they are pitched towards a single kind of student who learns primarily from outlines and has no responsibilities outside of bar review for nearly three months. None of the bar review companies seem to truly take into account the affective aspects of the bar study process. These programs do not do a great job of thinking about the diverse study body that law schools are striving to admit. What about working students? What about students with learning disabilities? What about students who learn best from visual materials such as flowcharts and diagrams?

When coaching students through bar study, a considerable amount of time is spent helping students make their bar review courses work for them. We must constantly walk the line between wanting our students to trust their bar review course and wanting them to trust themselves enough to prioritize the study techniques that work best for them. My students are brilliant, hardworking, and creative. My students also largely come from communities that are underrepresented in the legal profession. While my institution does a good job of helping our students during their three- to four- years of legal education see that they not only belong in the legal profession but that the profession needs them now more than ever, that often comes crashing down during bar study. Bar preparation brings to the forefront all their insecurities and feelings that they should not be lawyers. The confidence that comes from having achieved amazing feats and overcoming tremendous obstacles is replaced with anxiety and a sense that they will fail. They believe that they are alone in their nervousness and fear surrounding bar prep. They believe that their feelings mean they were never cut out for the legal profession in the first place. Imposter syndrome, confirmation bias, and stereotype threat combine to form a tornado of powerful, negative emotion that makes the difficult task of bar study a nearly insurmountable struggle, especially if the student performs poorly on a practice exam. Where is the bar review course that encourages these students and helps them see that they can do it?

Many of my students have ADHD, cognitive disorders (such as processing deficits), generalized anxiety disorder, and other disabilities that mean that they need to learn and study differently. I work with these students to obtain accommodations on the bar exam itself, but that is only occasionally successful. Where is the bar review course that addresses their needs? Where are the alternative study plans to take into account neurological differences? Where are the bar review companies that even acknowledge that some people might take the exam under non-standard conditions?

*Many of my students have ADHD, cognitive disorders (such as processing deficits), generalized anxiety disorder, and other disabilities that mean that they need to learn and study differently...*

*Where is the bar review course that addresses their needs?*

*Where are the alternative study plans to take into account neurological differences?*

*Where are the bar review companies that even acknowledge that some people might take the exam under non-standard conditions?*

My students send me doctrinal questions and questions about specific MBE, MPT, and essays at all hours of the day and night. While many bar review companies have increased the number of assignments on which they provide feedback, it often takes several days to receive and does not give students concrete suggestions for improvement. By the time students hear back, they have gone through so much material that they barely remember what they wrote. Where is the bar review company that provides unlimited forward-looking feedback? Where is the bar review company that provides answers to doctrinal questions in hours, not days?



Bar study is a psychological endeavor as much as it is an academic one. Students face more work than it is humanly possible to do in one day. They therefore go to bed feeling defeated nearly every night. Some students must work during bar prep to support themselves and their families. Some have children. Many serve as the primary support system and safety net for their immediate and extended families. I encourage my students early on to eliminate as many distractions and responsibilities as possible during the bar study period but for many, complete devotion to their studies is not, and has never been, an option. Why must these students constantly feel like they are at a disadvantage because they want to have dinner with their kids and put them to bed at night

Where is the bar review company that tells them that it is ok for them to both study and take care of their responsibilities? Where is the bar review company that has a manageable schedule that allows students to feel that they are consistently making progress?

I tell my students that building in practices to support their physical and mental health are just as important as watching lectures and doing practice questions, and that they need to wind their brains down at night in order to be able to actually rest, because these are necessary to sustain them during the bar study marathon. Where is the bar review company that does more than just pay lip service to the physical and emotional well-being of their students?

None of these considerations take into account the exorbitant and prohibitive cost of bar review courses, which is itself an impediment to student success. Mass-produced online programs cost thousands of dollars. Bar review companies play games with students, offering different prices at different times and giving discounts to those who know they can negotiate. This leaves students who do not know the industry, or are not confident enough to play hardball, at a disadvantage. Where is the bar review company that has a clear and consistent price structure?

To some extent, bar review companies are not incentivized to change their programs if the bar exam itself does not change. In trying to test the law of everywhere, the bar largely tests the law of nowhere. Therefore, students are forced to rely on expensive bar review companies because they cannot find the tested law anywhere else. Students also need to turn to bar review companies for practice questions: The most recent set of MBE questions released by the National Conference of Bar Examiners do not come with answer explanations so even if students wanted to purchase questions straight from the NCBE, they would have no idea why an answer choice is wrong or right. Thus, these materials have extremely limited pedagogical value as a study tool without the answer explanations provided by bar review companies.

The clients my students will represent rarely, if ever, make an appearance on the bar exam. My students are expert at dealing with clients who have complex lives and legal issues that don't fit squarely within one doctrinal area. They can connect their clients to necessary social services and develop creative arguments to fight for their clients' basic rights. They can advocate on multiple levels, not only fighting in the courtroom, but organizing communities and lobbying for legislation. Yet none of that is reflected in what they are asked to do on the bar exam. A new model for attorney licensure is long overdue. But, for now, I'd settle for a new kind of bar review.

## Combating the Epidemic of “I Did Everything I Was Supposed To Do”: Teaching Adaptive Learning in Academic Support to Promote First Time Bar Exam Success

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*“I don’t understand why I failed, I did everything my bar review course told me to do.”*

After receiving failing bar exam results, I always hear students say “I don’t understand why I failed, I did everything my bar review course told me to do.” My response is always the same: “You probably did not do what worked best for you.” Commercial bar preparation courses are a one-size-fits-all approach to bar studying, but law students come in all different sizes. A student who graduated with a 4.0 GPA from law school is getting the same bar exam study plan as a student who graduated with a 2.0 GPA. Due to declining law school application qualifications, many graduates can no longer rely solely on their commercial bar preparation study plan in order to be successful on the bar exam on their first attempt. Further, and unfortunately, many students do not realize this issue until they are on their second, third, or higher attempt taking the exam.

Recognizing that commercial bar preparation courses alone may not be sufficient to prepare our current law students for the bar examination, this article discusses how law school academic support programs should focus on teaching students how to study and how to adapt their learning for first time bar success.

### What is the Epidemic?

This epidemic is not new news. Nationally, law schools are admitting a large number of underprepared students. In part, this problem is related to the work ethic of undergraduate students, which has experienced a tremendous decline. From 1961 to 2003, the percentage of undergraduate college students studying twenty hours per week outside of class declined from 67% of students to 20% of students. What does this essentially mean? Students are entering law school not knowing how to study.

Much literature exists about the claim that undergraduate education is no longer providing students with fundamental and critical thinking skills they need to succeed. This notion of the current underprepared law student is demonstrated in declining national bar passage rates as the mean MBE score has been declining every year since 2013. Because students have declining credentials, and have difficulty studying (in part because they never really had to before), we are facing a bar passage crisis. **If the one-size-fits-all approach of commercial bar studying is not cutting it, what can we do?**

Queue adaptive learning. Adaptive learning emerged in the area of technology, where learning platforms were created to personalize teaching and material engagement. This technology uses preset rules or algorithms to shape content to the student’s individual needs and can provide necessary remediation and extra content for that student. Imagine that you could give your students their own personalized course, made specifically for their strengths, weaknesses, goals, and engagement patterns. Further imagine a course that adapted in real-time to their activity and adjusted moment by moment to their performance and their engagement level. This is adaptive learning technology. **The question is, do you think students’ commercial bar preparation courses do this?**

**The answer is, unfortunately, no.** Although commercial bar preparation companies currently advertise themselves as personalized, they often offer such individualized assistance on a small scale, such as giving students an extra question set in a subject or subtopic they are struggling in or having students answer questions about law they are not understanding. However, every student, no matter how strong or weak, experiences the same course – the same day-to-day study plan, the same lectures, and the same assignments. Students then hold on to the promise of their commercial course: if they complete 75% or more of the course, they will pass the bar exam. Students pursue the robotic and anxiety-fueled routine of checking off boxes to increase a number, rather than increasing their individual performance. Because our students' commercial bar preparation courses will not be true adaptive learning technology tools, I believe we need to teach our students to be adaptive learners in order to combat this epidemic.

### Combating the Epidemic: Three Steps to Teaching Adaptive Learning

**Step 1 - Planning:** Students have difficulty with long-term planning, as they are so often focused on the short-term. Students are not used to having to plan out years of schooling, as they cram studying and cram for exams. Further, students do not necessarily understand what their bar exam risk factors are and typically hold on to the promise of their commercial bar preparation courses – “If I do all of my work, I will be fine.” However, it's important that we teach students to adapt their learning to target their bar exam risk factors in their final years of law school.

How can we do this? Each student, at some point in their second year of law school, should have a mandatory meeting with an academic support professional to begin planning for their success on the bar exam. Prior to the meeting, students should fill out an individualize worksheet that gets them to think about planning. The worksheet and meeting should cover the following questions:

What are your bar exam passage risk factors?

How can you work on remedying those risk factors prior to the bar exam?

Which classes should you take in your third year to maximize your bar success?

This meeting assists students in adapting their learning to focus on long-term learning goals. This first step is critical, as each student will also learn the importance of planning and scheduling, which is necessary for each student during bar study as they create and plan individualized study schedules week-to-week.

**Step 2 - Performance:** When students are studying for the bar exam, they are constantly in a state of performance. Although they are learning and memorizing an abundance of substantive law, they are also practicing multiple choice questions, essays, and performance tests. While in law school, many students stick to only one learning strategy and do not self-monitor their learning. Rather, students are quite passive with learning, simply looking at correct answers after doing some practice questions and moving on without much thought. The process of self-monitoring for bar exam success is critical, due in large part to the short amount of time students have to study. This process enables students to diagnose their own weaknesses in learning and analyze them in relation to the chosen learning strategies to determine whether they need to change their strategies, or to determine whether they need to focus on one subject more than any other. Teaching students how to engage in this process throughout law school will only strengthen their ability to adapt their learning while studying for the bar exam.

**Multiple Choice:** When students are doing multiple choice questions in either an academic support remedial class or a bar review class in their third year, I think it's important to teach them to work actively with questions so they can adapt their learning. In both my second year course and my third year course, I provide students with a “Tracker Chart” for their multiple choice questions to assist them with learning to work actively with questions and to then adapt their learning.

Did not know the law	Reading comprehension	Tricked by facts	Assumed a fact not present	Missed an important detail	Down to 2 but picked the wrong one – why?
Put the law here and why you did not know the law	What sentences in the fact pattern did you miss? How fast are you going? Too fast?	Write the fact you were tricked by. Why were you tricked? How can you not be tricked again?	Which fact did you assume? Why did you assume it? How will you not assume it again?	Which important detail did you miss? Why?	Which two answers were you between? Why did you choose the wrong one? How will you know not to next time?

So, if a student did not know a lot of the law, they can adapt their studying to more memorization and review. Further, if a student was constantly going too fast through questions and missing issues due to reading comprehension, they can adapt their learning and slow down. Each column in the above Tracker Chart assists students in adapting some portion of their studying, learning or test taking. Then, at the end of each multiple choice assessment, I provide students with a self-assessment worksheet to further adapt their learning for the following week. The self-assessment worksheet contains variations of the following questions:

1. What was your overall percentage on this question set?
2. Based on your results, what material do you need to go back and review?
3. Which topics are giving you the most trouble, and which topics do you need more practice questions on?
4. When in your study schedule are you going to incorporate this additional practice?

**Essays and Performance Tests:** As the current law student has difficulty adapting their learning, improving their strategies to strengthen their writing can be especially challenging. In my second year support class, and in my third year bar review course, I give students writing assignments (either an essay or performance test) once per week. I not only provide feedback on their writing, but I have the students self-evaluate each week as well. After a written assignment, I give the students a worksheet to assist them in self-evaluation to adapt their learning for the next assignment. Whether it be an essay or performance test, the following are sample questions you can provide your students with for facilitating adaptive learning:

1. How did your answer compare to the model answer? Did you miss any issues? If so, which ones and why?
2. How strong were your rule statements as compare to the model answer?
3. Did you use all of the necessary facts to formulate your answer? Which facts did you miss? Why?
4. Did you outline your answer before writing it?
5. How much time did you spend on the assignment? If you went over any allotted time, on which part of the writing process did you spend more time on?
6. What is your plan to strengthen your MEE/MPT writing performance?
7. Where are you going to schedule additional practice in your study schedule to strengthen your performance?

**Step 3 – Reflection:** Similar to passive studying, students also rarely reflect on their work, and most often do not even think to do so. Reflection is critical in adaptive learning for the bar exam because if students do not reflect on their study schedules and decide if it is what they personally need after reflecting on their performance, they fall victims to the epidemic. The student must reflect on their self-evaluation of how they are doing and determine how they could approach learning tasks differently, and then must adjust their schedules and techniques to improve performance on future tasks.

I give students weekly self-assessment worksheets to facilitate reflection both in my second year skills class and in my third year bar review class. Here are some sample questions that can be used in self-assessment weekly worksheets:

1. Do your study strategies work? What is working, and what is not working?
2. Do you see an improvement in your performance from last week?
3. How are you going to remedy what is not working for you – what are you going to do differently?
4. When you are studying, are you incorporating practice and review of the topics you've already covered?
5. What is your individualized study schedule for the upcoming week?
6. Why did you craft your schedule this way?

*“Reflection is critical in adaptive learning for the bar exam because if students do not reflect on their study schedules and decide if it is what they personally need after reflecting on their performance, they fall victims to the epidemic.”*

If students can learn to adapt their studying before bar review, they will carry these practices with them to their commercial courses. Students no longer become focused on hitting a completion percentage in their bar review course, but instead focus on their own personalized learning goals for success. Although there's not one overall solution to the current bar passage crisis, students adopting adaptive learning is one step to bring us forward and combat the epidemic.

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## The Zen of Overcoming Procrastination

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“The journey of 1,000 miles begins with a single step.” - Lao Tzu



Whether you are in law school or teaching law school, there are always roadblocks that can keep us from being as efficient as we want. More and more, I find myself in office hours “teaching” how to overcome procrastination. This article is not just for the procrastinators out there, but for everyone who wants to be more effective at getting things done—while also minimizing your stress levels. Here are some tips you can share with your students (or yourself) to overcome procrastination.

Of course, as with any Zen, you want to begin with the right mindset. Thus, it’s important to first focus on your internal dialogue—the specific words you tell yourself about the assignment/project matters. The words you choose create different emotional states within the body and the brain<sup>1</sup>. For example, it’s critical to remind yourself that you don’t *have to* do this, you *get to* do this. Don’t tell yourself that you are *spending* a lot of time on the project; tell yourself that you are *investing* time. During the editing process, remind yourself that you are not *re-doing* or *correcting* your work, you are *improving* your work. Consider how the following two sentences make you feel:

“I have to spend a lot of time correcting my memo.”

“I get to invest time to improve my memo.”

The words you choose to speak to yourself can go a long way to energizing you or depleting you, so choose wisely. If you are in law school, you don’t *have to* do anything; you *get to* do everything.

Second, keep your mind right by focusing on the process rather than the outcome. When you focus on the outcome, you lose sight of the steps it takes to achieve it. Moreover, focusing on the end result instills a fixed mindset, which only inhibits the process<sup>2</sup>. And, of course, you will be more present (and thus more effective), when you focus on the process, resulting in far less stress.

So let’s talk about the process. Whatever you do—start! Start immediately, even if it’s just one small step. Psychologically, knowing that you have already started something is far better than the thought of not having started at all. Even putting your name on a paper and writing out just one sentence can be emotionally beneficial. Too many of us think that we have to have everything “right” before we start, but this isn’t true. It’s the process that helps us get it “right.” Accordingly, always remember that you don’t have to get it right when you get started, but you need to get started to get it right.

Once you have begun, keep this mantra in mind: *Do a little a lot*. It’s far more effective to work on something incrementally or in stages rather than sitting for hours upon hours trying to get it done. Doing a little a lot gives you more focus when you are working on your project, and it also gives you several chances to revisit your work from a fresh perspective. It also gets you into a routine that can break the cycle of procrastination, as procrastinators are notorious for doing things at the last minute in a large chunk of time.

<sup>1</sup> Chris P. Neck & Charles C. Manz, *Thought Self-Leadership: The Influence of Self-Talk and Mental Imagery on Performance: Summary*, 13 J. ORG. BEHAVIOR 681 (1992); Antonis Hatzigeorgiadis, et. al., *Self-talk and Competitive Sport Performance*, 26 J. APPLIED SPORT PSYCH., 82, 87 (2014).

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Of course, if you want a true Zen mindset, then you are open to connecting with the universe around you—so use that to your advantage and make yourself accountable. Studies show that when you have to answer to another person you are far more likely to get things done in a timely manner. In fact, one study found that if you have a specific person you are held accountable to on a specific timeline, it increased a person's chances of completing the task by 95%<sup>3</sup>. So tell someone what you intend to get done and in what time frame. You can also have cross-accountability with a classmate or co/worker (or even a family member) to keep each other in check. Innately, we don't want to let our friends or family members down, so you can see why the accountability can really work. For best results on a bigger project, such as an open memo, make the accountability incremental (such as, I will be halfway done in three days).

A few final thoughts: If you find yourself procrastinating, don't beat yourself up. Research shows that the more you can forgive yourself for procrastinating, the more likely you are to actually stop procrastinating and take action<sup>4</sup>. If you're feeling guilty about not having started earlier, you are living in the past, which doesn't help anyone—so let that go! Take a deep breath, be present, and make a decision to get started.

And one last tip: get a walk-up song. For those not familiar with baseball, every player has a "walk up" song when they approach the batter's box. This is a song they have chosen that gets them motivated before hitting. If you had to choose a walk-up song, what would it be? Make the song yours and make sure it's one that gets you inspired. Music has been shown to energize the body<sup>5</sup>, and you're more likely to get into your work/project when you feel good. Additionally, if you play your song every time you start to get to work, you will have a trigger to create a habit, which will go a long way to re-wiring your brain for action instead of procrastination.

So . . . what are you waiting for?

*"Research shows that the more you can forgive yourself for procrastinating, the more likely you are to actually stop procrastinating and take action."*

<sup>3</sup> Kate Matsudaira, *How to get things done when you don't feel like it*, 16 ACM QUEUE 1 (July-August 2018).

<sup>4</sup> Lucia Martinčeková & Robert D. Enright, *The Effects of Self-Forgiveness and Shame-Proneness on Procrastination: Exploring the Mediating Role of Affect*, CURRENT PSYCH. 10 (2018).

<sup>5</sup> William Forde Thompson & Lena Quinto, *Music and Emotion: Psychological Considerations*, The Aesthetic Mind: Philosophy and Psych. 357 (2011); Anne J. Blood & Robert J. Zatorre, *Intensely Pleasurable Responses to Music Correlate with Activity in Brain Regions Implicated in Reward and Emotion*, 98 Proc. Nat'l Acad. Sci. 11818 (2001).

## Developing Students' Awareness of Their Comfort (and Terror) Zones

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Learning theory tells us that students learn best when they are challenged. In fact, if students encounter difficulties while learning—something as innocuous as straining to read text in a gray font or as complex as trying to remember a subject they've completely forgotten—they are more likely to learn the material.

As professors, we want to create “desirable difficulties” for students. When we push students so hard that they experience cognitive overload and are simply overwhelmed, their learning screeches to a halt. But when we rush to give them the answer without giving them a chance to struggle with retrieval, their learning similarly screeches to a halt. We want to avoid being “helicopter professors” as much as we want to avoid channeling Professor Kingsfield<sup>1</sup>.

Learning theory suggests there is a happy medium, but outside of a clinical setting—and in real-world classes with dozens of students—how are we supposed to know which difficulties are desirable and which push students too far?

*“...we decided to flip the classroom, and turn it into a distance-learning course.”*

My best answer reflects a combination of self-regulated learning theory and growth mindset. Either in class at the beginning of the semester or individually in student conferences, I introduce students to the idea of learning zones, contrasting them with comfort zones and terror zones. To do this, I draw a large circle and label it “comfort zone.” I then draw a second circle around the first circle and label it “learning zone.” Next, I draw a big circle around the second circle, and label it “terror zone.” If I can, I like to color the terror zone in red.

Students are generally familiar with the term “comfort zone.” For those who are not, it's easy to explain: This is where you are when life is familiar. Work is familiar, you're in a familiar place with a familiar culture, you're speaking a language you know and understand. Let's face it—it's a nice place to be.

Unfortunately for those of us who love comfort, research tells us that to learn we have to move outside of our comfort zones. When we do, we will by definition be *uncomfortable*. We won't understand what's going on. We will think that what we are doing is not working. We will second-guess ourselves. We may feel some despair.

Rather than interpret those feelings as indicating that we are doing something incorrectly, though, we can train ourselves to interpret those feelings as signs that we are in the learning zone. At the very least, we can ask, “How uncomfortable am I? A little bit or a lot?” If our discomfort is manageable, we can take a deep breath and push ourselves more deeply into learning. If not, we can recognize that and retreat.

When we venture too far from our comfort zones—either because we are in a situation that is wholly unfamiliar or because something triggers an old memory of fear—we quickly veer from the learning zone into the terror zone. It's hard—maybe impossible—to learn there. The noise in our heads and the pounding of our hearts interfere with our ability to process information.

<sup>1</sup> Professor Kingsfield is the tyrannical Contracts professor at Harvard Law School in *The Paper Chase*, a 1971 book and a 1973 film. His aggressive use of Socratic dialogue with 1L James Hart leads to the student throwing up in the bathroom after class. Later in the semester, Professor Kingsfield says during class, “Mr. Hart, here is a dime. Call your mother. Tell her there is serious doubt about your becoming a lawyer.” Imagine your worst nightmare as a 1L. That's Professor Kingsfield.

Students' terror triggers are personal to them. We cannot anticipate or avoid all of them. But we can teach students to discern the difference between feeling slightly uncomfortable—or even really uncomfortable—and feeling terrified. Knowing there is a difference, and learning to name the difference, can give students enough of a feeling of control that they may be able to withstand the discomfort, at least for a while. When we allow ourselves to be uncomfortable without rushing to reduce our discomfort, we expand our capacity for discomfort. As students expand their capacity for discomfort, they expand their capacity to learn.

Helping students reframe their struggles as “expanding their comfort zones” is another way for them—and us—to normalize their struggles. Many professors experience profound discomfort upon seeing students struggle. Rather than feel compelled to rescue them—or if we're channeling Professor Kingsfield, to belittle them—we can instead try to shift their thinking from, “I'm never going to get this, it's impossible,” to, “I feel like nothing is working—I must be outside of my comfort zone. But am I terrified?” We are not labeling students' experiences; as autonomous beings, they are the only ones who can do that. But when we help students identify their inner experiences and make explicit the stories they are telling themselves, we help them to name the monster that is terrorizing them and make it a little less frightening.

Law school is stressful. Most students experience some discomfort as they learn new subjects or begin studying for the bar exam. Almost all will experience discomfort as they begin practicing law.

We are not mental health experts and we cannot reduce all of our students' anxieties. But we can give them a tool to help them identify and expand their capacity for discomfort, allowing them to better navigate the unknown and learn more deeply.

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*“It also allows us to have rich conversations about the essays, MBEs, and MPTs, whereas in previous iterations of the course, students were largely doing that work at home.”*

## Helping Students: Lived Experience Provides Meaning For a World of Fiction

By Chelsea M. Baldwin

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One day last summer, I gave my kid a hug. She looked at me and said, "You showered." Then she threw a screaming fit.

What does this #toddlermomlife anecdote have to do with bar prep? There are several things, but today we care about how our lived experiences impact how we interpret the words used by bar examiners in MBE questions.

In my story above, context helped me discern my kid's meaning, i.e., "I hate it when your wet hair touches my face." But, for people without the full context of that encounter, equally plausible interpretations of that sequence of events include disappointment that she didn't get to shower, or that she didn't want a hug, or that she just felt like throwing a screaming fit.

In the context of the bar exam, examinees are left to ascertain whether their understanding of statements such as "you showered" matches the examiners' understanding when using those words in a problem. Inevitably an examinee's understanding is built from their experience, or lack thereof, with the factual scenario the examiners use to test a legal concept.

To illustrate one type of disconnect between content and perceived meaning, here is a sample MBE question that my Bar Examination Foundations students dissected in spring of 2019:

A seller sent an email to a potential buyer, offering to sell his house to her for \$150,000. The buyer immediately responded via email, asking whether the offer included the house's front porch swing. The seller emailed back: "No, it doesn't." The buyer then ordered a front porch swing and emailed back to the seller: "I accept your offer." The seller refused to sell the house to the buyer, claiming that the offer was no longer open.

Is there a contract for the sale of the house?

- (A) No, because the buyer's initial email was a counteroffer.
- (B) No, because the offer lapsed before the buyer accepted.
- (C) Yes, because the buyer relied on the offer by ordering the swing.
- (D) Yes, because the buyer's initial email merely asked for information.

In the grand scheme of MBE questions, this is a fairly simple one that tests an examinee's understanding of where the factual line between a "mere inquiry" and a counter-offer that serves as rejection exists. But, in the early bar prep courses I've taught, approximately 50% of students get that question wrong. Classroom conversation revealed that it was usually because their lived experiences affected how they understood the fact pattern.

*"It also allows us to have rich conversations about the essays, MBEs, and MPTs, whereas in previous iterations of the course, students were largely doing that work at home."*

<sup>1</sup> This question is in both Wanda Temm's *Clearing the Last Hurdle* & Steve Emmanuel's *Strategies and Tactics for the MBE* (6<sup>th</sup> ed.), the texts that were adopted for Bar Exam Foundations, so I assume it is an NCBE question.

To illustrate<sup>2</sup>, with problem words italicized and reading thoughts/editorializing comments in brackets:

*A seller sent an email to a potential buyer, offering to sell his house to her for \$150,000.* [This explicitly tells me there is an offer.]

*The buyer immediately responded via email, asking whether the offer included the house's front porch swing.* [The buyer seems interested, but would like to explore whether a piece of furniture is included in the offer.]  
*The seller emailed back: "No, it doesn't."* [Furniture not included.]

*The buyer then ordered a front porch swing and emailed back to the seller: "I accept your offer."* (emphasis added) [This particular sentence is where life experiences led to ascribing different meanings to the words used. Some students interpreted "then ordered" as something like two minutes searching before one-click ordering off Amazon before responding to the seller relatively quickly (I'll refer to these as "Group A" students below). Other students interpreted "then ordered" as an ordeal involving consumer reports, comparative customer ratings, etc., because of how they approach or have observed others approach the task of purchasing furniture where days, if not weeks, would pass before buyer emailed seller (I'll refer to these as "Group B" students below).]

*The seller refused to sell the house to the buyer, claiming that the offer was no longer open.* [No expiry in original offer; no words of revocation preceding buyer's acceptance; no facts provided to allow a reasonable inference that offer expired due to lapse of time. Seller is just being a jerk.]

*Is there a contract for the sale of the house?*

Based on their divergent understandings of "then ordered a front porch swing and emailed back" some students became susceptible to one particular attractive distractor provided by the exam-writers.

- A. No, because the buyer's initial email was a counteroffer. [Group A: This is bogus, it was just a question with no language of demand. Eliminate. Group B: This is bogus, it was just a question with no language of demand. Eliminate. Group C: That's a thing, counteroffer, and Buyer replied without immediately accepting, so I'll choose A (less than 10%).]
- B. No, because the offer lapsed before the buyer accepted. [Group A: Lapse occurs when stated time or an unreasonable time has passed which is not the case here, eliminate. Group B: Lapse occurs when stated time or an unreasonable time has passed which is the case here because Buyer took time to buy a porch swing, so this is the right answer (about 30%).]
- C. Yes, because the buyer relied on the offer by ordering the swing. [Group A: Huh? Eliminate. Group B: Huh? Eliminate. Group D: That's a thing, reliance is a thing, and the Buyer wouldn't have bought the swing but for buying the house, so I'll choose C (less than 10%).]
- D. Yes, because the buyer's initial email merely asked for information. [Group A: Well, duh. Select. Group B: This is irrelevant because the offer lapsed, eliminate. Group C & Group D: So? Eliminate.]

For some of us, bar prep is hard because we have to put a significant number of our experiences aside because they don't help us understand the universe that the characters in bar questions live in. And that's okay, because nearly everybody has this experience, just for different topics depending on their past life experiences.

For students, persevering with practice questions is important to discover precisely where lived experiences will help them do well on the MBE, and where they need to, temporarily, set lived experiences aside in favor of the perspective of a fictional reasonably prudent bar examinee.

For ASP and Bar professionals, our first task is to illustrate and affirm to our students that this is a thing so they don't feel gaslighted by the bar exam. The next thing is to provide systems and support to help students formalize their understanding of when their lived experiences may put them at odds with the question drafter's intent. Some of the suggestions I provide to students include a special flashcard deck for fact vocabulary vs lived experience vocabulary, or using an MBE autopsy tracker such as the one provided in Wanda Temm's book, or even playing with rewriting the questions themselves and discussing with study groups to ascertain the line between lived experience understanding and exam universe meanings.

<sup>2</sup> Christina Chong did a fantastic live-illustration of this process at the AASE Diversity conference in Baltimore several years ago (I could be misremembering which conference). She put an MBE nuisance problem about a lake house and a light up on the screen, provided us with the rule for nuisance on the other half of the screen, and then took our answers. Even with the relevant rule provided, a significant number of people in that audience (academic success and bar prep professionals) read the facts in the context of their life experiences and selected an incorrect answer. Thanks to her work, I began address this phenomena directly in class to help students realize this is a normal part of studying for the bar. Based on student feedback, it was useful to them to receive affirmation that the difficulty in divorcing our lived experiences causes some questions to be harder than others, but once that becomes a known source of error, it becomes easier to compensate for.

## Call for Submissions

The Learning Curve is published twice yearly, once in the summer/fall and once in the winter/spring.

**Our current call for submissions is for the next issue, which we are looking to turn around very quickly. This installment will focus on the issues we all face going forward this summer and fall in this very challenging time. Many discussions have begun on this listserv and in various webinars on these issues, so we think the foundations for many useful articles are out there already.**

**Please send your article submission to [LearningCurveASP@gmail.com](mailto:LearningCurveASP@gmail.com) by no later than May 31, 2020.** (Please do not send inquiries to the Gmail account, as it is not regularly monitored.) Attach your submission to your message as a Word file. Please do not send a hard-copy manuscript or paste a manuscript into the body of an email message.

Please ensure that your articles are applicable to our wide readership. Principles that apply broadly — i.e., to all teaching or support program environments — are especially welcome. While we always want to be supportive of your work, we discourage articles that focus solely on advertising for an individual school's program.

Articles should be 500 to 2,000 words in length, with light references, if appropriate.

We look forward to reading your work and learning from you!

**- The Editors**

### ABOUT THE LEARNING CURVE

**The Learning Curve** is a newsletter reporting on issues and ideas for the Association of American Law Schools Section on Academic Support and the general law school academic support community. It shares teaching ideas and early research projects with a focus on models and learning environments that create positive learning experiences for law students.

#### We're on the Web!

Find current and past issues online.

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