

# Contents

Acknowledgments . . . . .	xiii
About the Authors. . . . .	xv
<b>Introduction</b>	<b>1</b>
<hr/>	
<b>Chapter 1</b>	
<b>Perceiving and Understanding the World</b>	<b>7</b>
<hr/>	
The Limits of Attention. . . . .	8
Observation and Interpretation. . . . .	11
Priming and Concept Accessibility. . . . .	11
Schemas, Scripts, and Stereotypes. . . . .	12
Confirmation Bias and Biased Assimilation. . . . .	14
Causal Attribution and Judgments of Responsibility. . . . .	17
Naïve Realism, False Consensus, and the Illusion of Asymmetric Insight . . . . .	21
Perspective Taking . . . . .	25
For Further Reading: Perception and Construal. . . . .	27
<b>Chapter 2</b>	
<b>Memory</b>	<b>29</b>
<hr/>	
The Workings of Memory . . . . .	30
Misperceptions of Memory. . . . .	38
Elicitation of Memories . . . . .	39
Accurate Versus Inaccurate Memories . . . . .	42
For Further Reading: Memory. . . . .	43

<b>Chapter 3</b>	
<b>Emotion</b>	<b>45</b>
Perceiving and Understanding Emotions . . . . .	48
General Effects of Mood . . . . .	50
Emotions and Appraisal . . . . .	52
Managing Emotions . . . . .	57
Using Emotions . . . . .	61
Emotions as a Source of Information . . . . .	62
Emotions as a Source of Motivation . . . . .	62
Emotions as a Facilitator of Thought . . . . .	62
Display of Emotions . . . . .	63
For Further Reading: Emotion . . . . .	66
<b>Chapter 4</b>	
<b>Judgment Shortcuts</b>	<b>67</b>
Positive Illusions . . . . .	68
Anchoring . . . . .	71
Availability and Representativeness . . . . .	72
Availability . . . . .	72
Representativeness . . . . .	73
Affect Heuristic . . . . .	75
Hindsight Bias . . . . .	75
Debiasing . . . . .	77
For Further Reading: Judgment Shortcuts . . . . .	83
<b>Chapter 5</b>	
<b>Decision Making</b>	<b>85</b>
Decision-Making Strategies . . . . .	85
Information Gathering . . . . .	87
Evaluation of Options . . . . .	88
Framing . . . . .	88
Contrast and Compromise . . . . .	92
Inaction Inertia . . . . .	94
Choice and Time . . . . .	95
Reactive Devaluation . . . . .	96
Emotions and Decision Making . . . . .	97
Affective Forecasting . . . . .	97
Decision Regret . . . . .	99
Not Deciding . . . . .	100

Structuring Decision Making . . . . .	102
Reason Giving . . . . .	103
Preferred Decision-Making Approaches . . . . .	104
Selection Versus Rejection . . . . .	105
Joint Versus Separate Evaluation. . . . .	106
Deadlines . . . . .	108
Group Decision Making . . . . .	108
Implementation of Decisions . . . . .	111
For Further Reading: Decision Making . . . . .	112

## Chapter 6

### **Persuasion and Social Influence** **115**

Two Paths to Persuasion. . . . .	116
Source Credibility. . . . .	118
Message Characteristics . . . . .	120
Influence Tactics. . . . .	126
The Psychology We've Already Discussed. . . . .	126
Reciprocity . . . . .	127
Scarcity . . . . .	129
Consistency and Commitment . . . . .	129
Liking . . . . .	130
Social Proof. . . . .	131
Obedience to Authority. . . . .	134
Channel Factors and Tension Systems . . . . .	136
Resistance . . . . .	138
For Further Reading: Persuasion and Influence. . . . .	140

## Chapter 7

### **Interpersonal Communication** **141**

The Complexities of Human Communication. . . . .	142
Perspective Taking in Communication . . . . .	143
Conversational Norms . . . . .	144
Nonverbal Communication . . . . .	145
Communication Mediums . . . . .	148
Culture and Communication. . . . .	151
Lying. . . . .	153
Development of Effective Communication . . . . .	157
Building Trust . . . . .	158
Establishing Rapport . . . . .	159
Listening . . . . .	161

Avoiding Talking Like a Lawyer . . . . .	163
Facilitating Disclosure . . . . .	165
Conveying Information . . . . .	166
For Further Reading: Communication . . . . .	169

## **Chapter 8**

### **Justice** **171**

---

Distributive Justice. . . . .	172
Procedural Justice . . . . .	176
Reestablishment of Justice . . . . .	180
Retribution . . . . .	181
Restoration of Justice . . . . .	182
For Further Reading: Justice. . . . .	184

## **Chapter 9**

### **Interviewing Clients and Witnesses** **187**

---

Preparing for the Client Interview . . . . .	188
Gathering Pre-Interview Information. . . . .	188
Setting the Stage. . . . .	189
Conducting the Interview . . . . .	190
Establishing a Good Relationship with the Interviewee. . . . .	190
Recognizing Differences . . . . .	191
Questioning and Listening . . . . .	193
Addressing Emotions. . . . .	194
Questioning. . . . .	198
Confirming Accuracy . . . . .	207
Remembering the Interview . . . . .	209
For Further Reading: Interviewing . . . . .	210

## **Chapter 10**

### **Counseling Clients** **211**

---

Broadening the Focus of the Consultation . . . . .	211
The Quest for Information . . . . .	213
The Quest for Justice. . . . .	215
The Quest for Reform . . . . .	217
The Quest for Other Nonmonetary Outcomes. . . . .	219
The Quest for Litigation . . . . .	221
Challenging Preconceptions . . . . .	222

Assessing the Likelihood of Success . . . . .	224
Dealing with Positive Illusions . . . . .	224
Dealing with Availability and Anchoring. . . . .	229
Dealing with Hindsight Bias . . . . .	231
Dealing with the Representativeness Heuristic:	
The Gambler's Fallacy . . . . .	231
Choosing Among Alternatives . . . . .	232
The Decision-Making Process . . . . .	232
Tendency to Gather Irrelevant Information . . . . .	233
Presenting Options. . . . .	235
Sunk Costs . . . . .	238
Comparison of Options . . . . .	239
Decisions for the Future . . . . .	241
Dealing with Strong Emotions. . . . .	244
Using Persuasion Effectively. . . . .	247
For Further Reading: Client Counseling . . . . .	251

## Chapter 11

### **Negotiating and Mediating** **253**

A Psychologically Expanded Model of Negotiation . . . . .	254
Constructing Initial Proposals . . . . .	256
Assessing What the Client Wants. . . . .	256
Assessing What the Other Side Wants . . . . .	260
Devising a Proposal . . . . .	264
Presenting Proposals . . . . .	270
The Dynamics of Negotiation . . . . .	275
Building Relationships. . . . .	275
Interpreting Counterparts' Behavior . . . . .	276
Conveying Information . . . . .	278
Presenting Options. . . . .	280
Persuading and Eliciting Concessions. . . . .	281
Dealing with Emotion. . . . .	285
Responding to a Counterpart's Proposal . . . . .	287
Conveying Offer to Client . . . . .	287
Evaluating the Offer . . . . .	288
Mediation. . . . .	295
Psychological Opportunities Offered by Mediation . . . . .	295
Psychological Challenges Posed by Mediation . . . . .	300
Mediation as a Benefit for Clients . . . . .	301
For Further Reading: Negotiation and Mediation . . . . .	305

<b>Chapter 12</b>	
<b>Discovery and Due Diligence</b>	<b>307</b>
Deciding What Information to Seek . . . . .	308
Dealing with Written Requests for Information . . . . .	310
Preparing Interrogatories and Document Requests . . . . .	310
Responding to Interrogatories and Document Requests . . . . .	311
Conducting and Defending Depositions . . . . .	314
Conducting the Deposition . . . . .	315
Preparing the Witness for Deposition . . . . .	333
Defending the Deposition . . . . .	346
Debriefing the Client . . . . .	347
Dealing with Videotaped Depositions . . . . .	348
Reviewing Information Obtained through Discovery and Due Diligence . . . . .	349
For Further Reading: Discovery and Due Diligence . . . . .	352
<b>Chapter 13</b>	
<b>Writing</b>	<b>353</b>
General Psychological Guidance for Writers . . . . .	354
Clarity and Accessibility . . . . .	354
Audience Perspective: In the Reader's Shoes . . . . .	358
Briefs . . . . .	359
Credibility . . . . .	360
A Good Story . . . . .	361
Using Facts . . . . .	364
Early Sections of the Brief . . . . .	367
Describing Alternatives . . . . .	368
Order of Arguments . . . . .	369
Word Choice . . . . .	370
Complaints . . . . .	371
Stories and Facts . . . . .	371
Word Choice . . . . .	373
Credibility . . . . .	374
Letters . . . . .	374
Letters to Clients . . . . .	374
Letters to Others . . . . .	378
Contracts . . . . .	379
Framing, Status Quo Bias, and Anchoring . . . . .	380
Promotion of Positive Relationships . . . . .	381
For Further Reading: Writing . . . . .	383

<b>Chapter 14</b>	
<b>Ethics</b>	<b>385</b>
Bounded Ethicality . . . . .	387
Ethical Blind Spots . . . . .	387
Slippery Slopes and Boiling Frogs . . . . .	389
Ethical Fading . . . . .	390
Ethics in Law Practice . . . . .	393
Ethical Rules and Standards . . . . .	393
The Agency Relationship . . . . .	395
The Challenges of the Adversarial System . . . . .	400
The Tolls of Law Practice . . . . .	403
Lawyers in Groups . . . . .	404
Responses to Others' Ethicality . . . . .	407
Inability to Recognize and Learn from Ethical Failures . . . . .	409
Solutions . . . . .	411
Be Aware . . . . .	411
Make Ethics Salient . . . . .	411
Be Critical . . . . .	412
Plan Ahead . . . . .	413
Counsel Clients on Ethics . . . . .	414
For Further Reading: Ethics . . . . .	416
<b>Chapter 15</b>	
<b>On Being Productive, Successful, and Happy</b>	<b>417</b>
Attorney Productivity and Success . . . . .	417
Time Management . . . . .	417
Mistakes . . . . .	425
Explanatory Style: Lawyers and Pessimism . . . . .	428
The Choke: Keeping Cool Under Pressure . . . . .	430
Collaboration . . . . .	432
Attorney Happiness and Well-Being . . . . .	444
Lawyer Satisfaction . . . . .	445
Improving Well-Being . . . . .	447
But Not Too Happy . . . . .	457
Final Thoughts . . . . .	459
For Further Reading: On Being Productive, Successful, and Happy . . . . .	460
Endnotes . . . . .	461
Index . . . . .	577