

Competence as Situationally
Appropriate Conduct: An Overarching
Concept for Lawyering, Leadership and
Professionalism



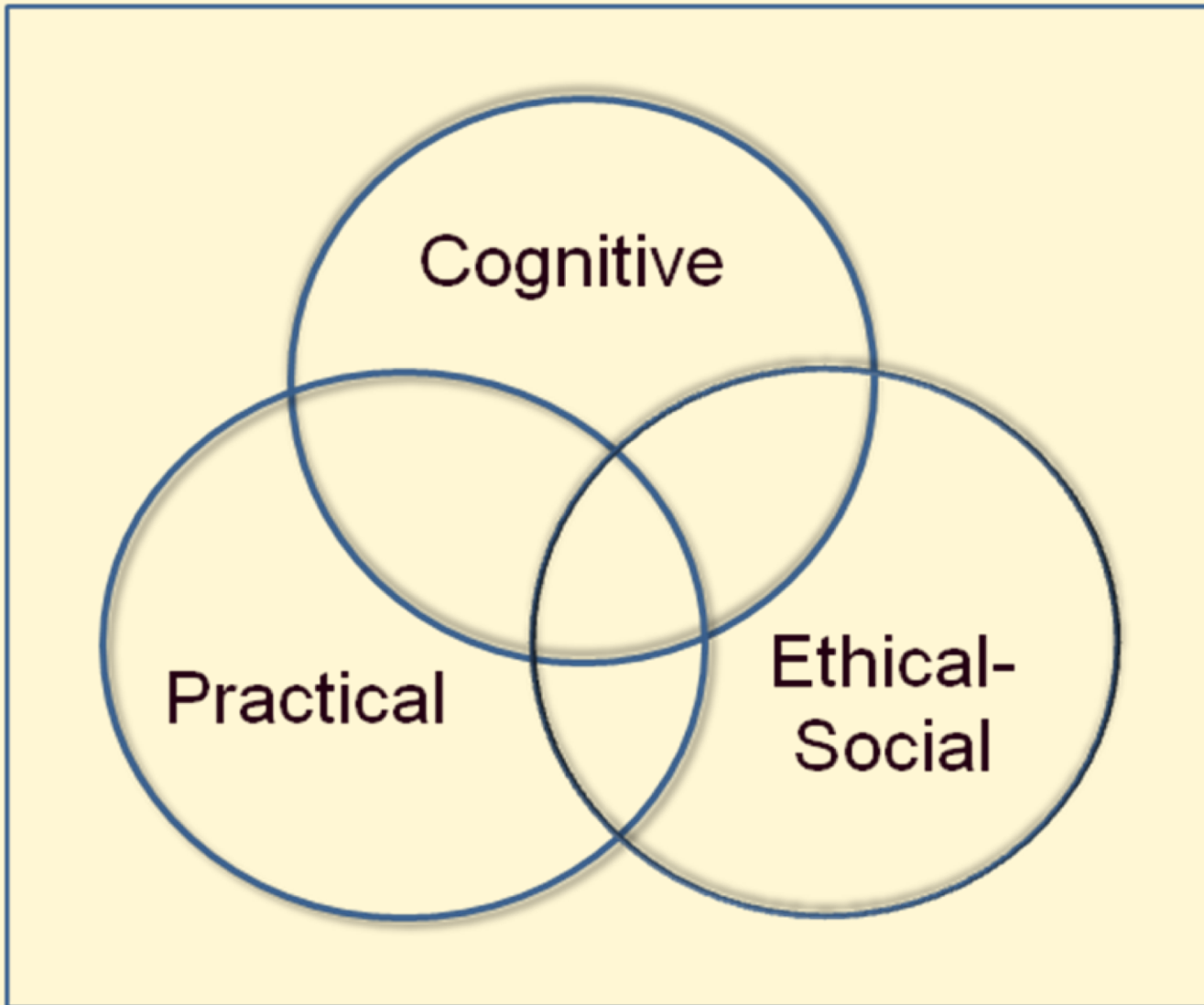
Leary Davis

Goals

1. Talk about a simple concept: competence is best understood as situationally appropriate conduct.
2. Explore how the concept links Lawyering, Leadership and Professionalism.
3. Look at three personal attributes essential for competence.
4. Offer concluding definitions of the legal profession and professionalism.

An Overarching Concept for Lawyering, Leadership and Professionalism

CARNEGIE APPRENTICESHIPS



We've been advocating for and working to integrate leadership training into legal education for some time without realizing it; we've just lacked a unifying theory.



MacCrate Skills and Values

THREE technical legal skills:

1. Legal analysis and reasoning
2. Legal research
3. Litigation and accompanying formal alternative dispute resolution procedures

SEVEN generic leadership skills:

1. Problem solving
2. Factual investigation
3. Communication
4. Counseling
5. Negotiation
6. Organization and management of legal work
7. Recognizing and resolving ethical dilemmas
- 7A. Informal alternative dispute resolution

SIX development goals:

1. Writing – ONE technical legal skill
FIVE leadership skills:
 2. Strategic thinking
 3. Project management
 4. Interpersonal skills
 5. Values
 6. Maturity (through challenge, mentors, feedback, introspection, development and improvement)

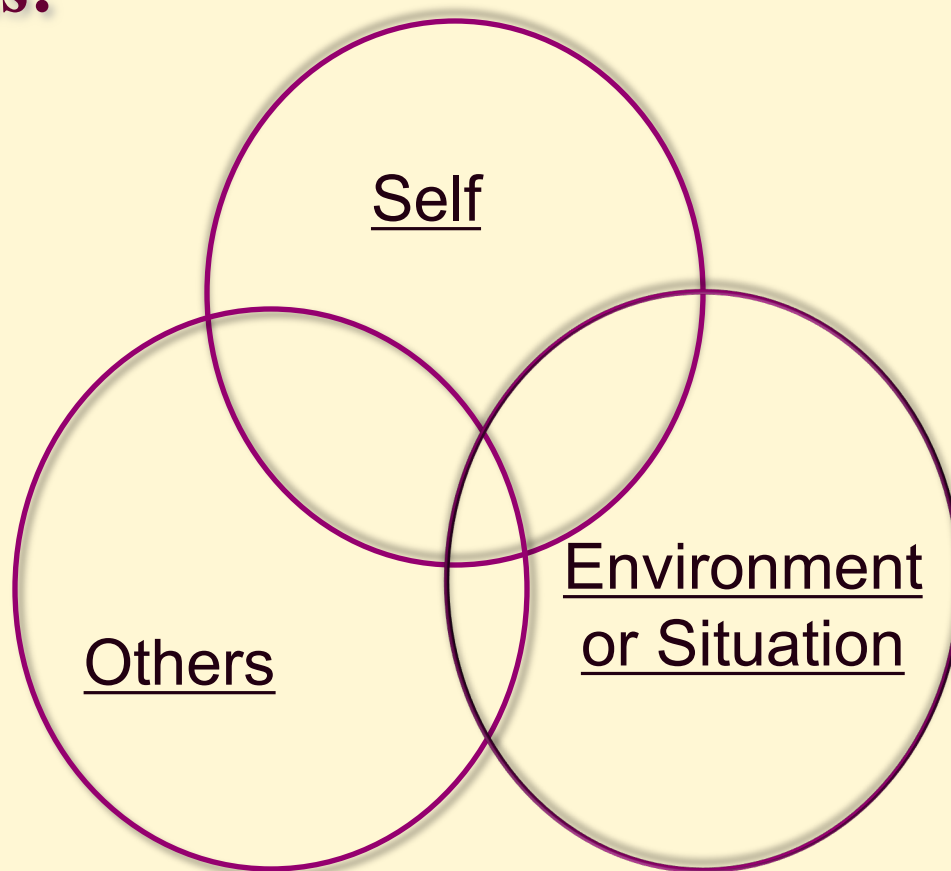
LEADERSHIP

David Campbell: Actions that focus resources to create desirable opportunities.

Joel Barker: A leader is someone who takes you to a place you would not go by yourself.

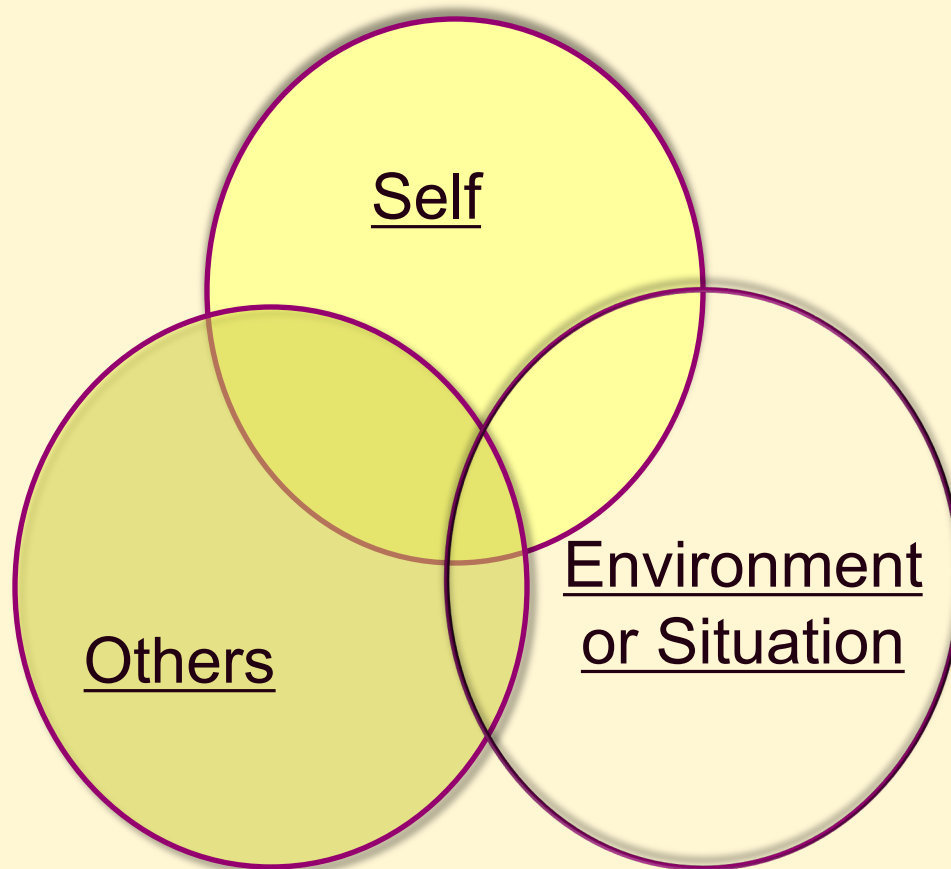
COMPETENCE

Leadership, lawyering and professionalism are dynamic processes, involving interaction among three components:

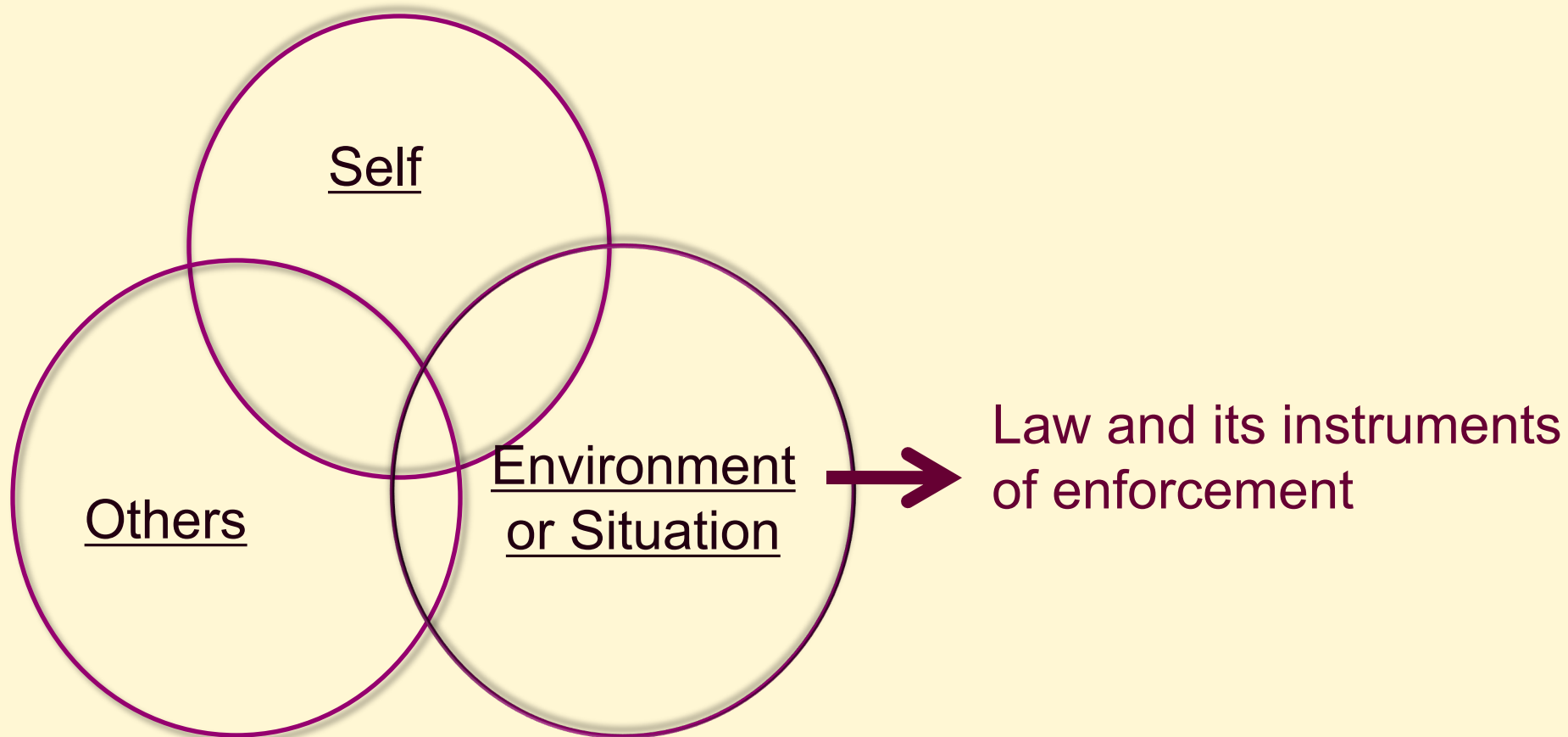


COMPETENCE

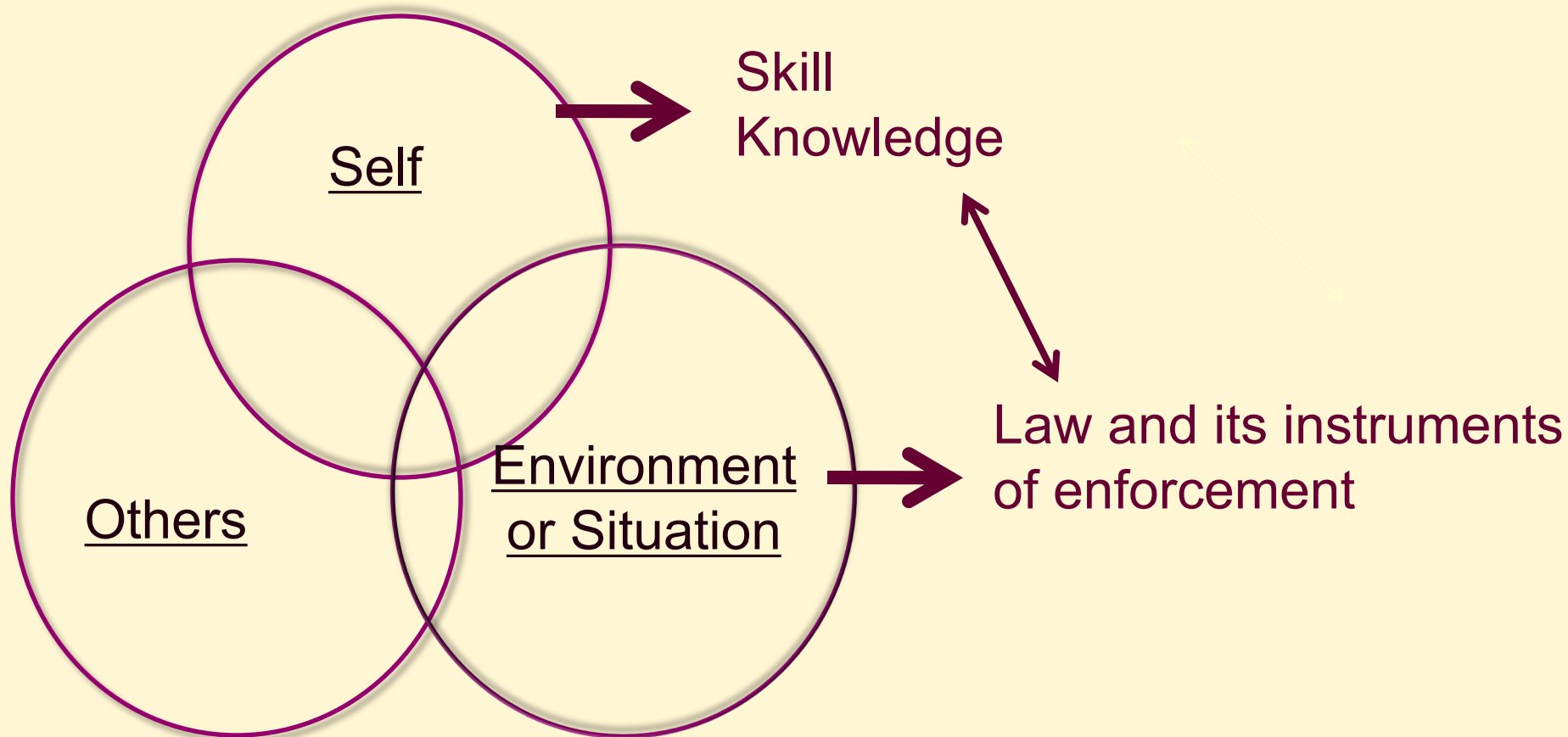
Contingency, Situational or Servant Leadership Model, or just Leadership or just Competence?



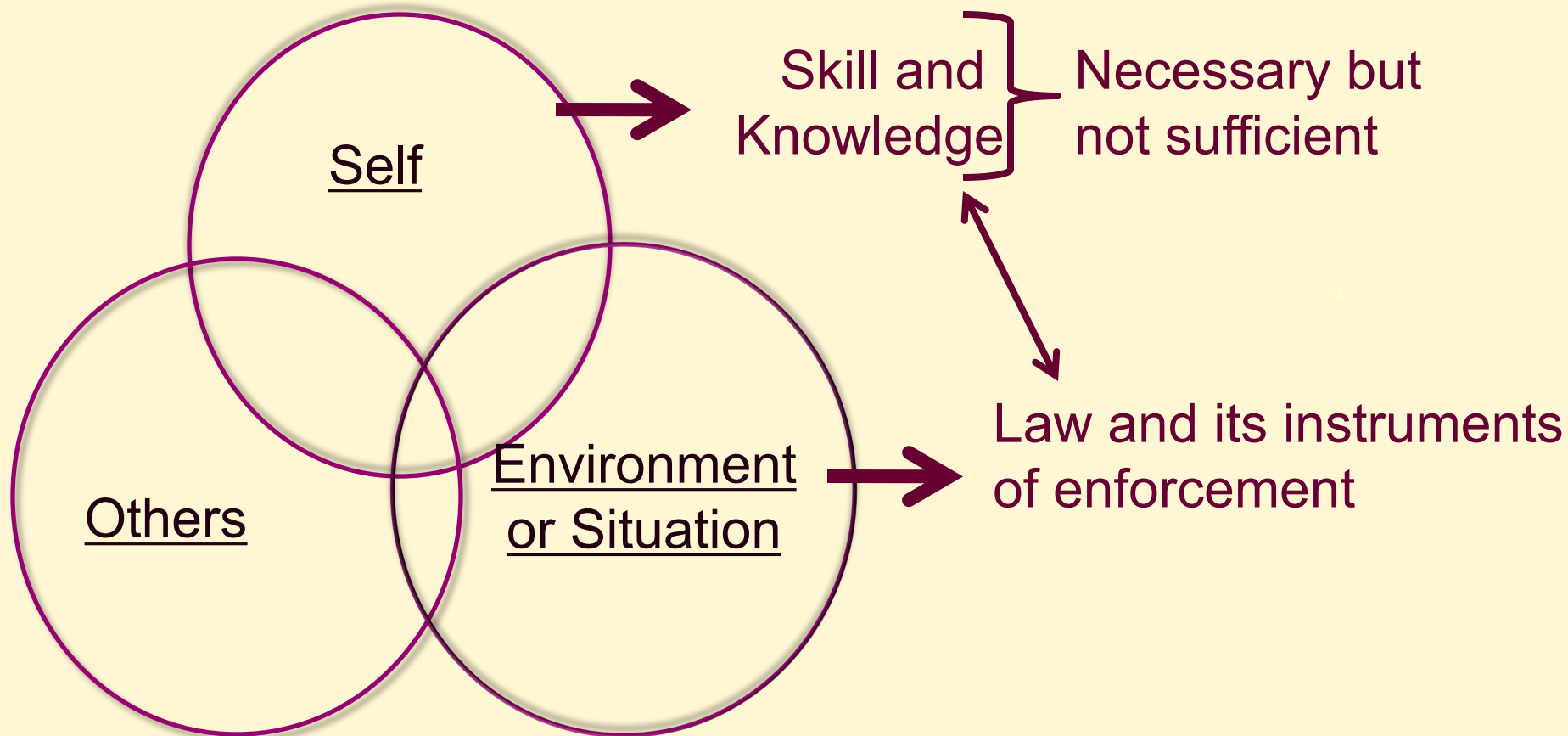
DOCTRINE



COMPETENCE



COMPETENCE



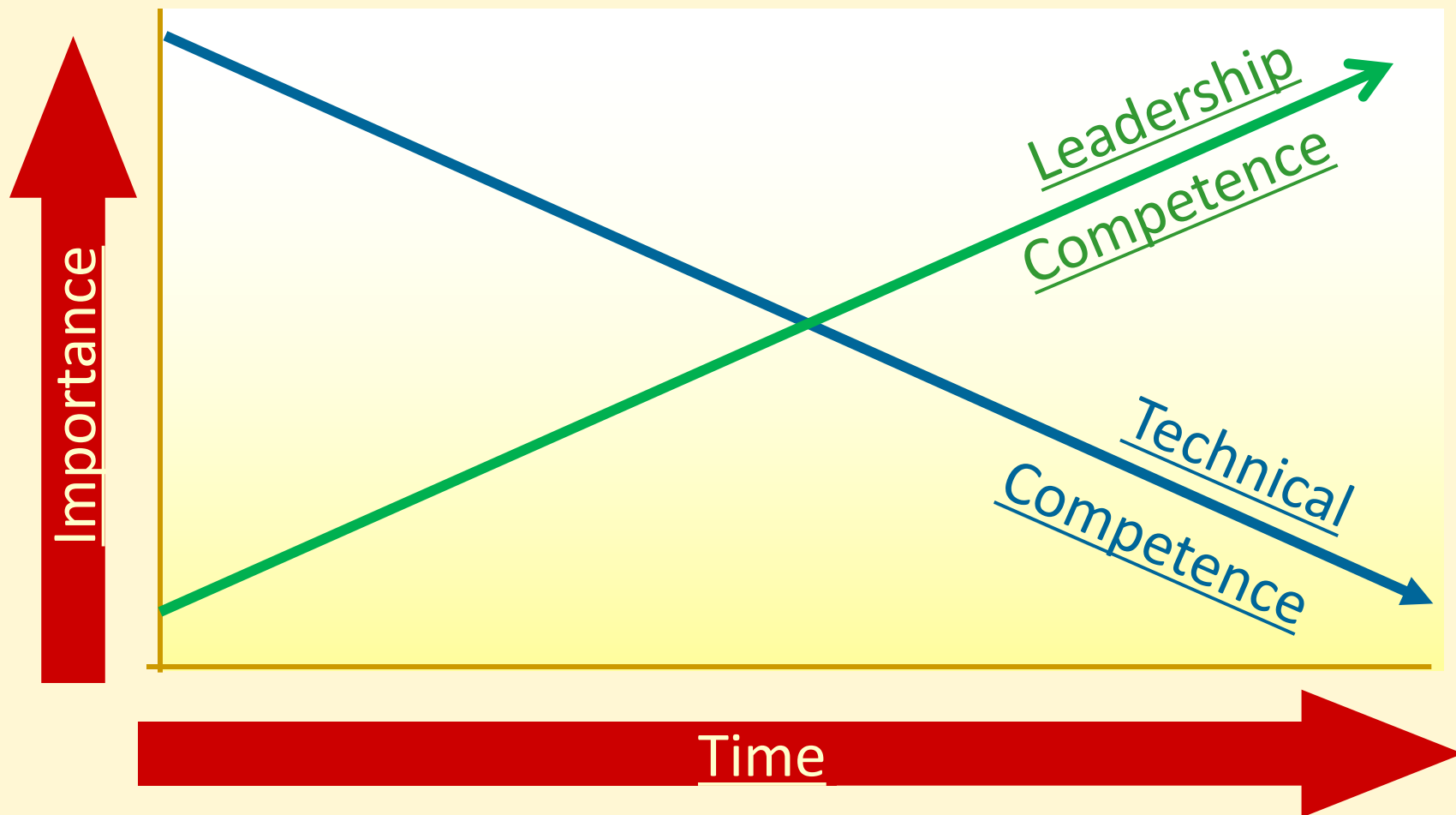
Competency Models

A MODEL OF THE LEGAL PROFESSIONALIZATION PROCESS

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STAGES	SKILLS		CATALYTIC PERSONAL ATTRIBUTES	KNOWLEDGE	
	TECHNICAL SKILLS	INTERPERSONAL SKILLS		KNOWLEDGE OF LEGAL DOCTRINE	INTERDISCIPLINARY KNOWLEDGE
STAGE I ANALYST Acquisition of Foundation Skills and Knowledge	Analysis of cases Interpretation of legislation Synthesis of cases and of cases and legislation Modes of argument Basic research Drafting legal memoranda	Oral expression Written communication	Talents, values, attitudes and other aspects of personality, the utilization of which may be appropriate in differing professional contexts to help transform knowledge and skill into competent representation, including but not limited to: energy general intelligence self-knowledge self-acceptance self-discipline self-efficacy interpersonal intelligence integrity resourcefulness tolerance for ambiguity and complexity optimism courage assertiveness industry persuasiveness self-reliance tenacity resilience achievement orientation	Substantive knowledge of doctrine, rationale and trends in basic theoretical or core fields Knowledge of legal procedure: civil, criminal and administrative Knowledge of ideas about what law is and of ideas about the operation of law in society	General knowledge needed to generate broad perspectives and to comprehend factual situations and legal doctrine in basic theoretical or core fields
STAGE II ADVOCATE Development of Advocacy Skills and Knowledge	Gathering facts from sources other than people Marshalling facts Trial, Administrative, and appellate advocacy Drafting pleadings, briefs, and other advocacy documents Discovery Pretrial and motion practice Administrative hearings Jury and nonjury trials Settlement of case on appeal Preparation of record on appeal Argument of appeal Post-appeal practice Application of procedural knowledge	Gathering facts from individuals and organizations Interviewing Counseling Negotiation Persuasive writing Dispute management and resolution Avoidance Coercion Accommodation Compromise Mediation Conciliation Collaboration	dependability openness to new experiences intellectual humility friendliness empathy emotional maturity and stability expanded by the lessons of experience, and strengthened by action, observation, reflection, discussion, practice and interaction	Operative knowledge in functional fields which are subjects of particular cases and transactions Testing and refining, in the contexts of study, practice, action, observation and reflection, ideas about what law is and about the operation of law in society	Knowledge in nonlegal fields which are subject of or relevant to particular cases and transactions
STAGE III COUNSELOR, PLANNER, AND IMPLEMENTER Development of Ability to Formulate and Implement Sound Strategies in Complex Environments	Systems analysis and design Planning and taking action Collection and management of information Evaluation of situations and environments Formulation of goals and objectives Analysis and allocation of resources Development of situationally appropriate strategies and tactics Implementation of strategic and tactical plans through creation and utilization of effecting mechanisms	Implementation of strategic and tactical plans through leadership of people and organizations Involvement of appropriate persons in decision making and implementation Delegation and subsequent monitoring Establishment of credibility through personal example and development of organizational culture Management of law offices and other organizations	Sound judgment Professional responsibility Appropriate behavior in differing contexts	Operative knowledge in a large number of interrelated functional fields which may be relevant to the planning process Testing and refining, in the contexts of study, practice, action, observation and reflection, ideas about what law is and about the operation of law in society	Knowledge in a large number of nonlegal fields which may be relevant to the planning process in general and particularly to leadership, the implementation of plans, and the management of work and personnel
STAGE IV INTEGRATED PROFESSIONAL Synthesis and Self-Realization	Synthesis of skills and knowledge of Stages I, II, and III with each other; with life experiences, talents, needs, values, attitudes, interests and other aspects of personality; and with general knowledge fields beneficial to one's effective work in the legal profession, including Economics, History, Political Science, Literature, Accounting, Information Technology, Philosophy, Religion, Sociology, Psychology, Geography, Anthropology, Sciences, Statistics, Languages, Business, Leadership, Public Administration, the Fine Arts, etc.		Integrated personal and professional lifestyles consistent with other Stage IV elements Natural, smooth, efficient, and situationally appropriate behavioral transitions Development and continuous refinement of a philosophy of law and of the appropriate roles of law and the legal profession in present and future society		

Relative Importance of Technical and Leadership Competence Over Time



Five Keys to Competence

1. Technical Knowledge
2. Professional Skills

Personal attributes

3. Self-Knowledge
4. Knowledge of Others
5. Knowledge of Environment

Challenges inherent in
learning more about
self and others

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JOHARI'S WINDOW

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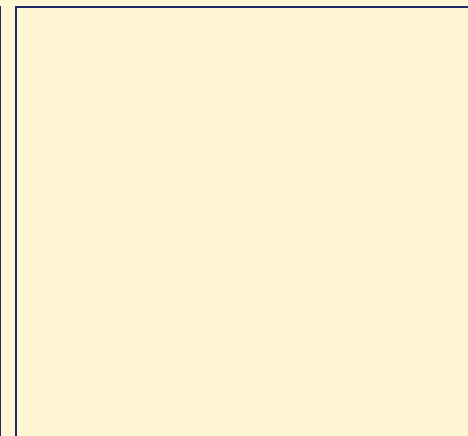
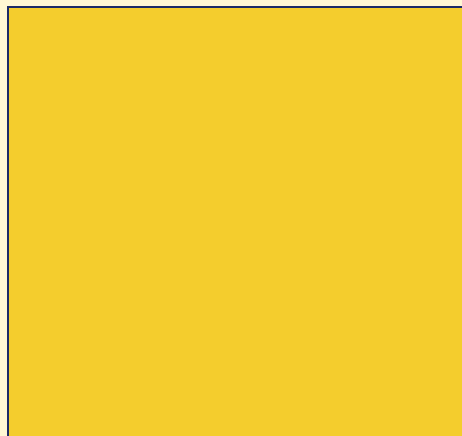
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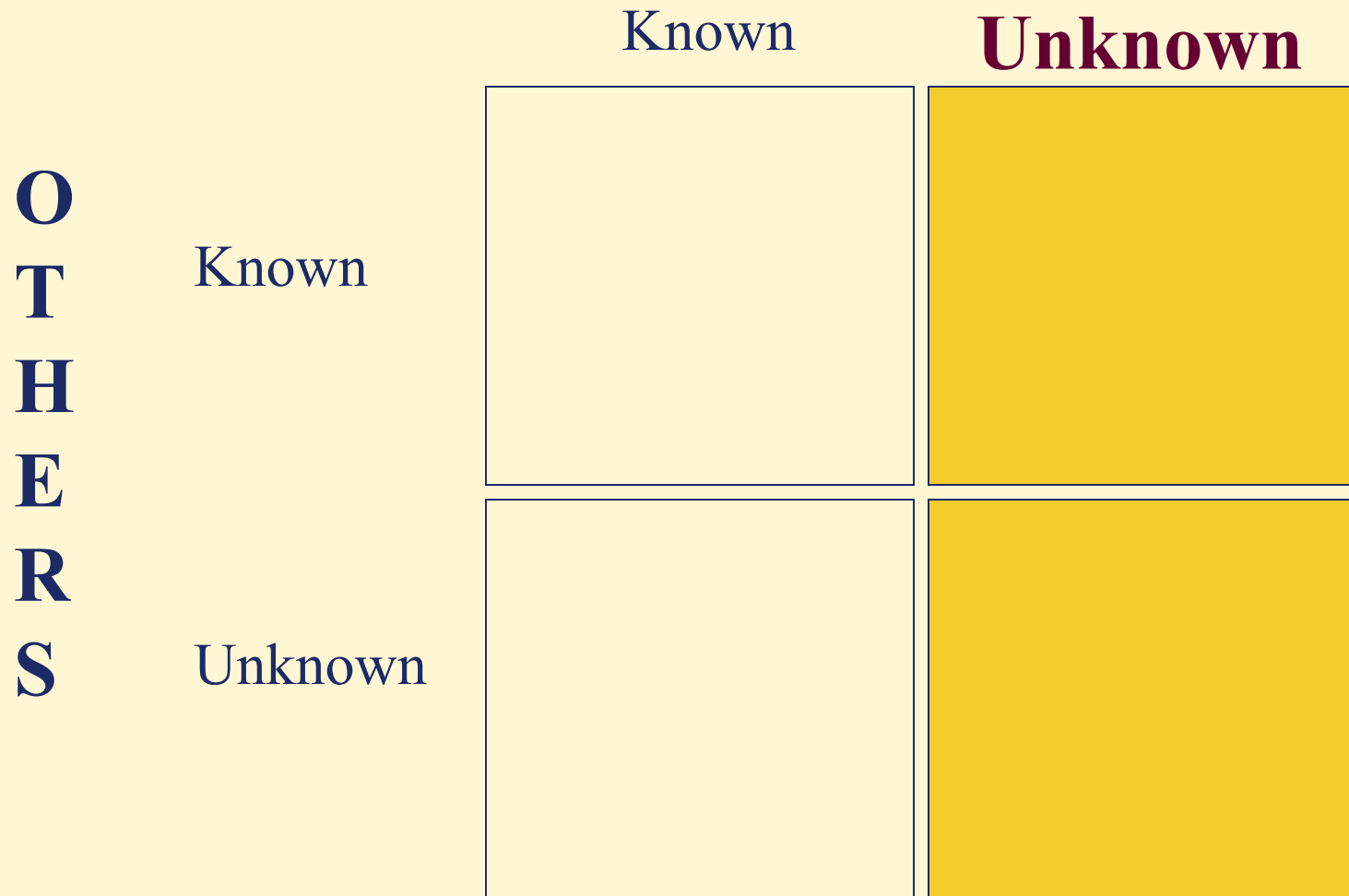
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JOHARI'S WINDOW

SELF



SELF

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**Source of
synergy**

WHO'S CORRECT?

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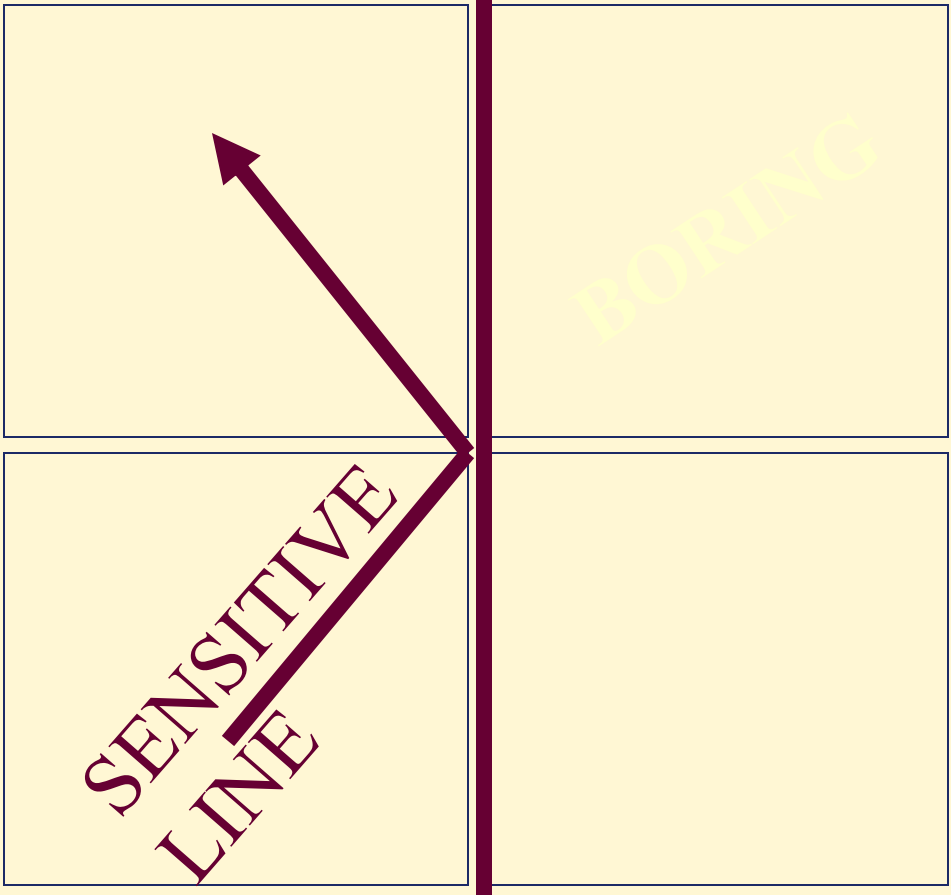
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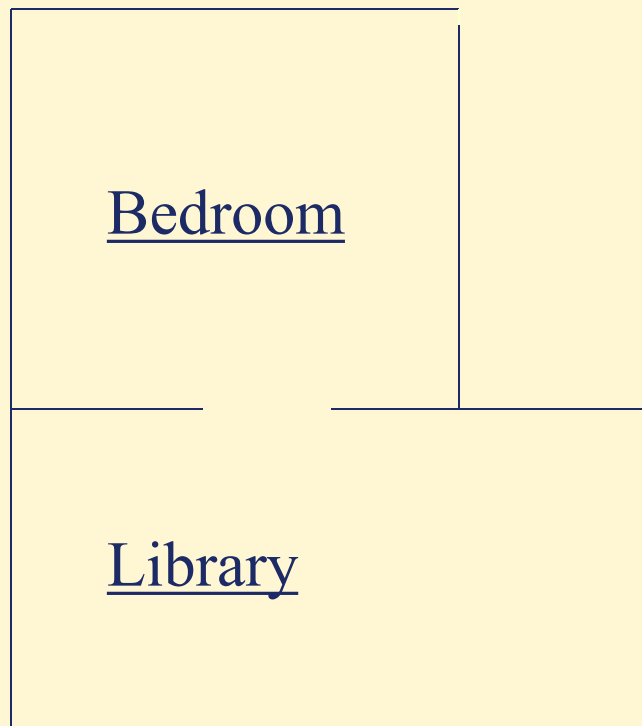
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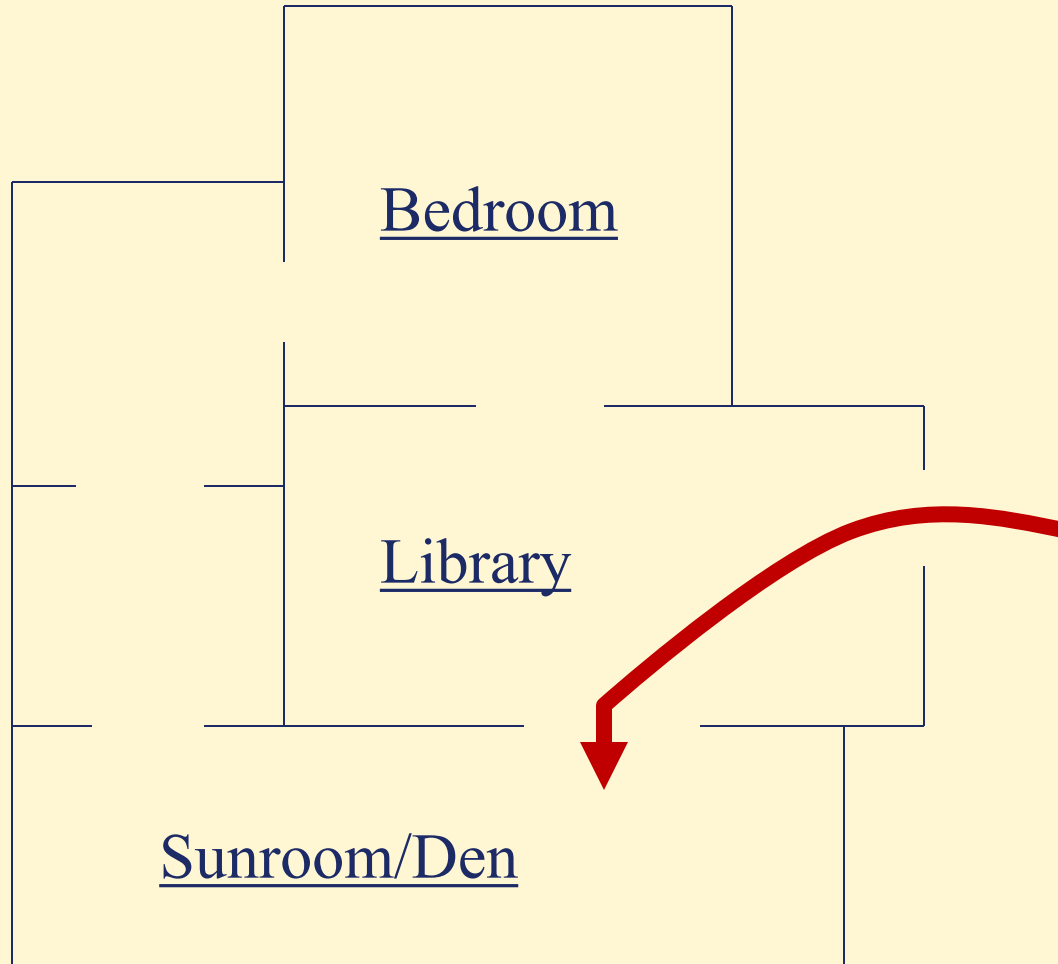
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Leary's Self-Concept:

COMPETENT

INDUSTRIOUS

TRUTHFUL

GOOD

Joy's Message:

INCOMPETENT

LAZY

LYING

EVIL!

TO GAIN KNOWLEDGE OF ONESELF INCONSISTENT WITH ONE'S SELF-CONCEPT, NEED:

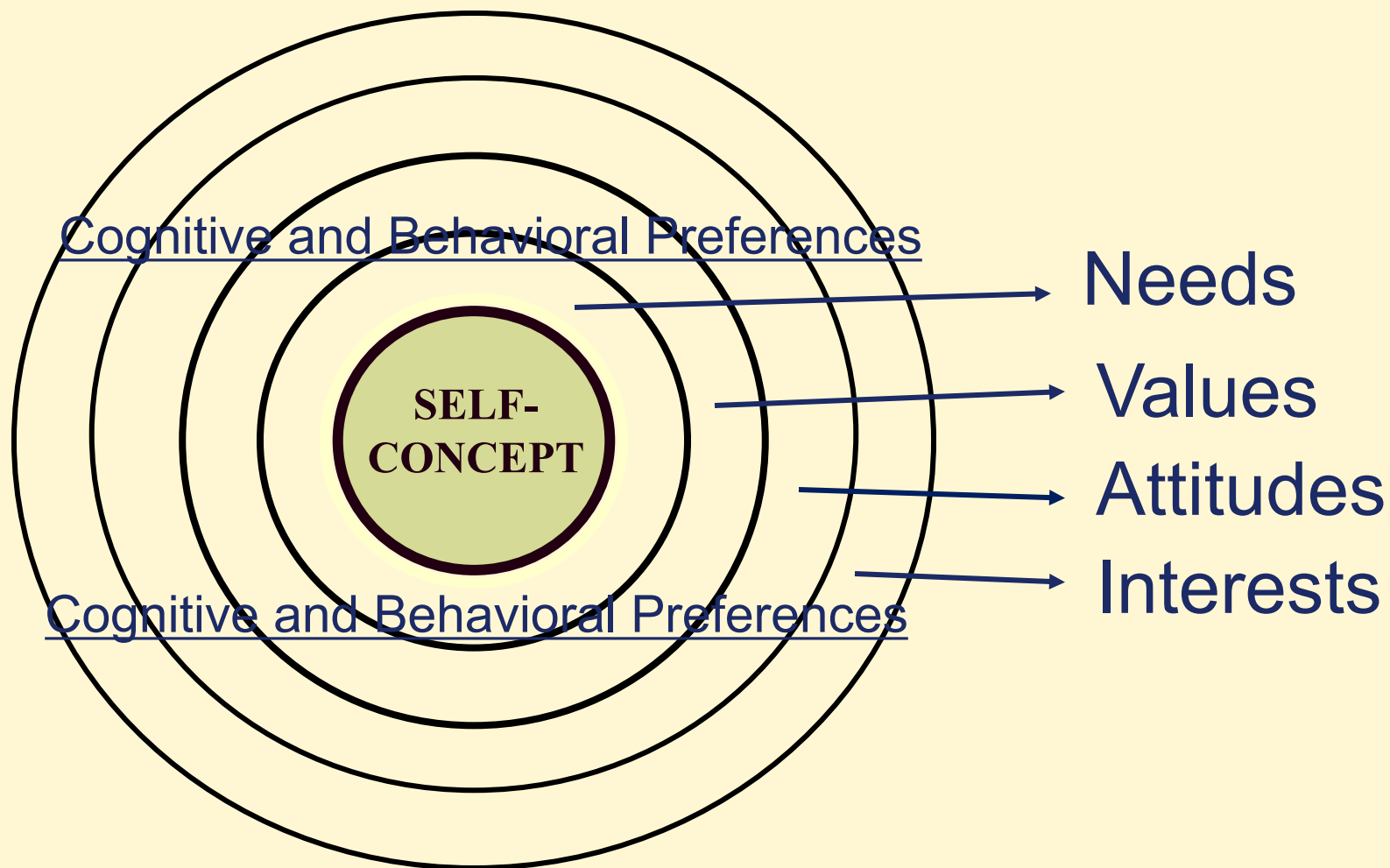
- SMALL DOSES**
- OBJECTIVE INFORMATION**
- SUPPORTIVE ENVIRONMENT**

What may be most useful for
you to know about yourself
and others, and why?

Motivators: Determinants of Personal Attributes

- Needs
- Values
- Attitudes
- Interests
- Cognitive and Behavioral Preferences

Motivators:



LEGAL PROFESSION

Genus –

A **network** of specially educated persons drawn together by shared needs, values, attitudes and interests

DIVERSITY?

**CONFLICT or
SYNERGY?**

		Masculine	
		High	Low
Feminine	High		
	Low		

		Masculine	
		High	Low
Feminine	High	MF	mF
	Low	Mf	mf

Definitions

LEGAL PROFESSION

Genus – A network of specially educated people drawn together by shared needs, values, attitudes and interests

Differentiae – to establish, maintain and continuously improve a system of justice, within the context of which they help others solve problems and maximize opportunities, within the bounds of equity and civility.

Definitions

PROFESSIONALISM:

Conduct consistent with the foregoing definition of the legal profession

UNPROFESSIONAL:

Conduct that is inconsistent with the definition of the legal profession

Walter Gelhorn, 1964

Law professors are great individualists. Typically each one cultivates his own path of academic ground to the best of his ability the results have by no means been discreditable. But faculties that can plan a genuine team effort may be able to do something more momentous – They may succeed in giving the law school world nothing less than a new model of a legal education, if they can agree upon the directions of main academic endeavors for the next few years.

Walter Gelhorn, The Second and Third Years of Law Study, 17 J. Legal Ed. 1, 15 (1964).