



# RAMA UNIVERSITY

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## FACULTY OF JURIDICAL SCIENCES

**SUBJECT:** Professional Ethics and  
Professional Accounting System

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**LECTURE:** 22

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# Lecture-22



**Profession ethics and Advocacy**

**Standards of Professional Conduct and Etiquette**

## LECTURE 22: Profession ethics and Advocacy, Standards of Professional Conduct and Etiquette

### Professional Ethics

In the context of the Indian law, an advocate is a subset of a lawyer. In other words, while all advocates are lawyers, not every lawyer is an advocate. The legal practice of advocates is established in the Advocates Act, 1961. Based on the Act, only advocates—and not any other subset of a lawyer—are permissible to practice in courts and plead on behalf of others, but only after obtaining the required license. An advocate transacts business under authority that is governed and restricted by power of attorney granted by the principal. An Advocate has to be registered with the State Bar Council as described under the Advocates Act, 1961. In Galanter and Robinson's (2013) views, as experts, advocates analyze client's legal problems carefully to provide exhaustively researched legal counsel. In addition, they represent clients before other deciding bodies, including tribunals, arbitrations, and professional disciplinary committees. Accordingly, they are expected to be very ethical.

The word ethics is a combination of two words, *ethos* (Greek for character) and *more's* (Latin for customs). The combination defines how people choose to interact with each other. Philosophically, ethics outlines what is good for a person and for the whole society, as well as the duties individuals owe themselves and each other. In its application in philosophy and law, therefore, Gillers (2014) informs that ethics encompasses learning what is correct and incorrect, and then choosing to do the correct thing. The most ethical or right decisions have various alternatives and have far reaching consequences. According to Gillers (2014), such decisions may also have mixed outcomes, including indefinite consequences. The most ethical decisions also have personal consequences. In most, if not all jurisdictions, Code of Ethics for Advocates explains the demands of professional conduct for advocates. In Hazard, Hodes, and Jarvis's (2014) understanding, and as will be demonstrated in the remaining section of this article, the determination of such requirements is to warrant that advocates do not act viciously or carelessly or in a manner distasteful to the decorum, dignity, or integrity of their occupation, or in such a manner as would utterly affect the trust bestowed on them.

### LEGAL ETHICS

The word ethics is derived from the Greek word 'ethos' (character) and from the Latin word 'mores' (customs). Together they combine to define how individuals choose to interact with one another. In philosophy, ethics defines what is good for the individual and for society and establishes the nature of duties that people owe to themselves and to one another. Legal ethics may be taken to mean the body of rules and practice which determine the professional conduct of the members of bar. The main object of legal ethics has well been explained by the Chief Justice Marshall- "The fundamental aim of Legal Ethics is to maintain the honour and dignity of the Law Profession, to secure a spirit of friendly cooperation between the Bench and the Bar in the promotion of highest standards of Justice, to establish honourable and fair dealing of the counsel with his client, opponent and witnesses, to establish a spirit of brotherhood in the bar itself and to secure that lawyers discharge their responsibilities to the community generally."1 To maintain the honour of the legal profession, the Advocate Act has been passed and the

Bar Councils have been established. The State Bar Councils and the Bar Council of India can punish the advocate for the professional or other misconduct.

### **Object of the Professional Ethics**

The main object of the professional ethics of advocacy is to maintain the dignity of the legal profession. Chief Justice Marshall has observed in this respect, “The fundamental aim of legal ethics is to maintain the honour and dignity of the law profession to secure a spirit of friendly co-operation between the bench and bar in the promotion of higher standard of justice, to establish honourable and fair dealings of the counsel with his client, opponent and witness, to establish a spirit of brotherhood with bar itself and to secure that lawyers discharge their responsibilities to the community generally”. Legal profession is not a business but a profession. It has been created by the state for the public good. Consequently, the essence of the profession lies in the three things:

1. Organisation of its members for the performance of their function;
2. Maintenance of certain standards, intellectual and ethical for the dignity of the profession;
3. Subordination of pecuniary gains to efficient services

### **Need for Professional Ethics**

The American Bar Association Committee has well explained the need of the code of legal ethics. It has observed that the legal profession is necessarily the keystone of the arch of Government. If it is weakened, and allowed to be a subject of the corroding and demoralising influence of those, who are controlled by craft, greed or gain or other unworthy motive, sooner or later the arch, must fall. The future of the country depends upon the maintenance of the shrine of the justice, pure and unrolled by the advocates. Thus, it cannot be so maintained, unless the conduct and motives of the members of the legal profession are what they object to be. Therefore, it becomes the plain and simple duty of the lawyers to use their influence in every legitimate way to help and make the Bar what it is ought to be. A code of ethics is one method of furtherance of this end. The committee has further observed that members of Bar, like Judges, are officers of the court and like judges, they should hold office only during good behaviour and this good behaviour should be defined and measured by ethical standards, however high, as necessary to keep the administration of justice, pure and unsullied. Such standard may be crystallized into a written code of professional ethics and the lawyer failing to conform thereto, should not be permitted to practise or retain membership in professional organization.

### **Accountability**

The advocate has been made accountable. Section 35 of the Advocates Act provides that where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee. The disciplinary committee can punish the advocate for the professional or other misconduct. Where on receipt of complaint or otherwise the Bar Council of India has reason to believe that any advocate whose name is not entered on any State Roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee. This committee can punish the advocate for such misconduct. The 'professional or other misconduct' includes the breach of duties

specific by the rules made by the Bar Council of India. The breach of duty has, thus, been made punishable. The order of the disciplinary committee of the State Bar Council may be challenged in appeal before the Bar Council of India and the order of the disciplinary committee of the Bar Council of India may be challenged in appeal before the Supreme Court.

### **Nobility of Advocates**

It is commonly said that legal profession is noble—and it is indeed true. It should be noted, however, that the profession's nobility is anchored in the observance and compliance of established professional standards by the people working in the legal industry, especially lawyers (Hazard, Hodes, & Jarvis, 2014). The standards are known as the ethics of the legal profession, or simply, legal ethics, or specifically in this article, Code of Ethics for Advocates. The most important scope of the legal ethics is to uphold the dignity and order of the law profession; to establish moral and fair transactions of the advocates with their clients, witnesses, and opponents; to maintain a spirit of friendly collaboration between the bar and bench in the furtherance of highest standard of justice; and to demonstrate a spirit of fraternity with bar. Besides being professionals, advocates are court officers who play a critical part in the administration of justice. Therefore, advocates have the twofold responsibility of keeping the client's' interests confidently, while handling themselves as court officers. For these reasons, advocates are expected to follow the highest standards of integrity and honor. The conduct of advocates ought to reflect their honored position in society, which originates from the profession's nobility (Bagust, 2013). In fewer words, the services of advocates to their clients should be graced with compassion, morality, and law. In India, generally, advocates shall adopt the standards of professional conduct and etiquette outlined in Chapter II, Part IV of the Bar Council of India (BCI) Rules, as a guide for transacting matters associated with law. The advocates should also be guided by the Advocate Act, 1961.

### SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	All advocates are lawyers, not every lawyer is an advocate.	True	False
2.	The legal practice of advocates is established in the Advocates Act, 1961	True	False
3.	An advocate transacts business under authority that is governed and restricted by power of attorney granted by the principal.	True	False
4.	An Advocate has to be registered with the State Bar Council as described under the Advocates Act, 1961	True	False
5.	The word ethics is a combination of two words, <i>ethos</i> (Greek for character) and <i>more's</i> (Latin for customs).	True	False

**Answers: 1-(a),2-(a), 3-(a),4-(a),5-(a)**