



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

SUBJECT: Professional Ethics and
Professional Accounting System

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LECTURE: 23

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Assistant Professor

Lecture-23



**Conflict between interest and duty,
Duty to court, Duty to Client, Duty to opponent**

Nature of Professional Ethics

A code of ethics is developed for each profession. Suppose you write articles in a newspaper. Professional ethics require that you verify facts before you write that article. Similarly, in India for lawyer also a set of guidelines have been laid down so far as professional ethics are concerned, which defines their conduct in the profession that is highly competitive and dynamic. Indian law requires lawyers to observe professional ethics to uphold the dignity of the profession. Lawyers are expected to follow professional ethics and that they are accountable for dishonest, irresponsible and unprofessional behaviour. Further, lawyers can lose the license to practice if they are found guilty of unethical practices that tarnish the dignity of their profession. A lawyer must adhere to the professional norms, for fair dealing with his client and to maintain the dignity of the profession.

Sir Sivaswamy has rightly observed that, “it is of course true that men are not necessarily made moral by courses of lectures on ethics but it must be remembered that lapses from the traditional standard are often due to ignorance and that the diffusion of knowledge of rules applicable to the professions must contribute to the maintenance of a high standard of integrity. The observation of the canons of legal profession will, no doubt, raise the profession in the publication estimation”.

Many professions in India, such as legal and medical professions have codes of practice that members of the profession must follow. For advocates it is the Advocates Act and Bar Councils Act, whereas for doctors it's the Indian Medical Councils Act, 1956 and Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002. These legislations aim at preventing exploitation of clients and patients; and at the same maintaining the integrity of the profession. The Bar Council of India is a statutory body that regulates and represents the Indian bar. It was created by Parliament under the Advocates Act, 1961. It prescribes standards of professional conduct and etiquette and exercises disciplinary jurisdiction. Section 49(1)(c) of the Advocates Act, 1961 empowers the Bar Council of India to make rules so as to prescribe the standards of professional conduct and etiquette to be observed by the advocates. It has been made clear that such rules shall have effect only when they are approved by the Chief Justice of India. It has also been made clear that any rules made in relation to the standards of professional conduct and etiquette to be observed by the advocates and in force before the commencement of the Advocates (Amendment) Act, 1973, shall continue in force, until altered or repealed or amended in accordance with the provisions of this Act.

On codification of ethics law, Justice P.B. Majmudar said, "I feel the rules governing ethics of lawyers should never have had to be codified but there are black sheep in every profession”.

Chapter II of part VI of the Rules framed by the Bar Council of India deals with the standards of professional Conduct and Etiquette. These rules specify the duties of an advocate to the Court, client, opponent and colleagues, etc. It's Preamble states that, “An advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate. Without prejudice to the generality of the foregoing obligation, an advocate shall fearlessly uphold the interests of his client and in his conduct conform to the rules hereinafter mentioned both in letter and in spirit.” The rules hereinafter mentioned contain canons of conduct and etiquette adopted as general

guides; yet the specific mention thereof shall not be construed as a denial of the existence of others equally imperative though not specifically mentioned.

The rules mentioned in chapter II of part VI of the rules of Bar Council of India maybe discussed as follow:-

1. Rules on Advocates Duty towards Court:

The Bar Council of India has made certain rules so as to prescribe duties of an advocate towards the court. Such duties may be explained as follow:

i. Act in a dignified manner: During the presentation the case and while acting otherwise as an advocate before the court is required to conduct himself with dignity and self respect. An advocate shall not be servile and in case of proper ground for serious complaint against a judicial officer, it is his right and duty to submit his grievances to the proper authority. In re D.C. Saxena, AIR 1966 SC 2481 - The rule empowers the advocate to make complaint against judicial officer but it should be submitted to proper authority.

ii. An advocate is required to maintain towards the court respectful attitude bearing in mind that the dignity of the judicial office is essential for survival of free community. In U.P. Sales Tax Service Association v Taxation Bar Association, AIR 1996 SC 1384 – This rule makes it clear that the lowering the dignity of the judicial officer will be a serious danger to the survival of a free community.

iii. Not communicate in private:

An advocate shall not influence the decision of the court by any illegal or improper means. It prohibits the private communication with the judge relating to pending case. If an advocate does so it amounts to professional misconduct – Rizwan-Ul-Hassan v. State of U.P. AIR 1953 SC 250.

iv. Refuse to act in an illegal manner towards the opposition:

The rule requires the advocate to use his best effort to restrain and prevent his client from resorting to sharp or unfair practice opposite or from doing anything in relation to the in court, opposing council or parties which the advocate himself ought not to do. It also requires the advocate to refuse to represent the client who persists in such improper conduct. The Rule makes it clear that the advocate shall not consider himself mere mouthpiece of the client and shall exercise his own judgment in the use of restrained language in correspondence, avoiding scurrilous attacks in pleadings and using intemperate language during arguments in the court - M.Y. Shareef & Anothers. V. Hon'ble Judges of Nagpur High Court & Ors., (1955) 1 SCR 757.

v. Appear in proper dress code: An advocate shall appear in court at all times only in the prescribe dress and his appearance shall always be presentable.

vi. Refuse to appear in front of relations: An advocate shall not enter appearance, act, plead, or practice in any way before a court, tribunal, or authority mentioned in section 30 of the Advocates Act, 1961 if the sole or any member thereof is related to the advocate as father, nephew, grand-father, son, grand-son, uncle, brother, nephew, first cousin, husband, mother, wife, daughter, sister, niece, aunt, sister-in-law, mother-in-law, and father-in-law, son-in-law, daughter-in-law. For this purpose of this rule, court shall mean a court, Bench or tribunal in which abovementioned relation of the advocate is a judge, member or the presiding officer.

vii. Not to wear bands or gowns in public places: The rule requires the advocate not to wear bands or gowns in public place other than in court except on such ceremonial occasions and at such places as the Bar Council of India and the court may prescribe.

viii. Not to represent establishments of which he is a member: The rule provides that an advocate shall not appear in or before any court or tribunal or any other authority for or against an organization, institution, society, or corporation if he is a member of executive committee of such organization, institution, society, or corporation. However, it has been made clear that this rule shall not apply to such a member appearing as ‘amicus curiae’ or without a fee on behalf of a Bar Council, Incorporated Law Society or a Bar Association.

ix. Not appear in matters of pecuniary interest: An advocate shall not act or plead in any matter in which he himself has some pecuniary interest.

Illustrations: (a) He should not act in a bankruptcy petition when he himself is also a creditor of the bank.
 (b) He should not accept a brief from a company of which he is a director.

x. Not stand as surety for client: An advocate shall not stand as a surety, or certify that soundness of a surety for his client required for the purpose of any legal proceedings.

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)

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