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## Ethics of Legal Profession

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- Meaning, Nature and Need of the Professional Ethics
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- Object of the Professional Ethics
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- Advantages of Having Codified Professional Ethics
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## Definition

Professional Ethics may be defined as a code of conduct written or unwritten for regulating the behavior of a practicing lawyer towards himself, his client, his adversary in law and towards the court.

Thus, ethics of legal profession means the body of rules and practice which determine the professional conduct of the members of a bar. When the person joins the legal profession and starts practicing, his relation with men in general is governed by general rules of law but his conduct as advocate is governed by the especial rules of profession ethics of the Bar.

The Oxford Companion to Law explains the professional ethics as “the standards of right and honourable conducts which should be observed by members of learned professions in their dealings one with another and in protecting the interests and handling the affairs of their clients.”

## Meaning, Nature and Need of the Professional Ethics

Professional ethics is a set of rules and laws which govern the rights and duties, etiquettes, duties towards the court, client, opponent, colleague etc.

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 higher standard of Justice. The legal profession is not a business but a profession. It has been created by the state for the public good. Consequently, the essence of profession lies in 3 things.

- 1) Organisation of its member for the performance of their functions.
- 2) Maintenance of site and standard, intellectual and ethical, for the dignity of the profession.
- 3) Subordination of pecuniary gain to efficient service.

## Object of the Ethics of the legal profession

The main object of the ethics of the legal profession is to maintain the dignity of the legal profession and the friendly relation between the Bench and the Bar. **Professional Ethics is also known as legal ethics.**

“Legal Ethics is that branch of moral science which deals with the duties which a member of the legal profession owes to the public, the Court, to his professional brethren and to his clients. [Ethics] is a study of the meaning and application of judgments of Good, bad, right, wrong, etc. and every evaluation of law involves an ethical Judgment.” The description of Legal Ethics already clarifies that legal ethics is one of the branch of moral science.

## Professional Ethics

Section 49(1)(c) of the Advocates Act, 1961 empowers the bar council of India to make rules so as to prescribe the standard of professional conduct and etiquette to be observed by the Advocates. It has been made clear that such rule shall have effect only when they are approved by Chief Justice of India.

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## 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

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## Why is ethics important to the practice of law?

First because lawyers are integral to the working-out of the law and the Rule of Law itself is founded on principles of justice, fairness and equity. If lawyers do not adhere and promote these ethical principles then the law will fall into disrepute and people will resort to alternative means of resolving conflict. The Rule of Law will fail with a rise of public discontent.

Second, lawyers are professionals. This concept conveys the notion that issues of ethical responsibility and duty are an inherent part of the legal profession. It has been said that a profession's most valuable asset is its collective reputation and the confidence which that inspires. The legal profession especially must have the confidence of the community.

Justice Kirby of the Australian High Court once noted:

The challenge before the legal profession....is to resolve the basic paradoxes which it faces....To reorganise itself in such a way as to provide more effective, real and affordable access to legal advice and representation by ordinary citizens. To preserve and where necessary, to defend the best of the old rules **requiring honesty, fidelity loyalty, diligence, competence and dispassion in the service of clients**, above mere self-interest and specifically above commercial self-advantage.

Third, because lawyers are admitted as officers of the court and therefore have an obligation to serve the court and the administration of justice.

And finally because lawyers are a privileged class for only lawyers can, for reward, take on the causes of others and bring them before the courts.



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## Advantages Of Having Codified Professional Ethics

**Firstly**, codes of ethics are important means of social control. It will keep new corner to the profession aware and old members in line according to the social requirement and expectations. The dignity of the profession will be required to be maintained by maintaining the public confidence in it.

**Secondly**, Professional ethical codes prevent control or interference by the government or by society though some one of its agencies. If a degree of standardization is needed and that is done by the profession itself, it will keep outside interference away. Governmental regulations through law tend to be negative while ethics points to the goal desired.

**Thirdly**, ethical codes are important, in developing higher standards of conduct. The codes crystallize best Judgment about the profession. Robert D. Kohn, Fellow of the American Institute narrates five stages of development.

Fourthly, the existence of code will have great educative, corrective and appreciable value for both the lawyers and the laymen.



## Rule of Confidentiality

### **Confidentiality -**

The duty of confidence which a lawyer owes to a client can be based on various principles of law. It can be regarded as an implied term of the retainer or contract, or it can be based in tort as part of the duty owed by the lawyer to the client, or it may arise in equity.

Apart from these legal principles, the duty of confidence also gives rise to an ethical obligation and thus a breach of client confidentiality would be grounds for disciplinary action.

There are exceptions, such as where the client consents, or where the lawyer is compelled by law to disclose, or where the wider public interest requires disclosure. This last exception is still inadequately defined.

Furthermore, there remains the issue as to whether the disclosure of a client confidence to the lawyer's spouse or partner should the disciplinary machinery for breach of a professional rule. If harm results from the disclosure then the answer is clear; yes.

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## Conflict of interest in legal profession – A need for regulation

### Conflict of Interest

The nature of the legal profession is such that the client confides in a lawyer with utmost trust and confidence. The lawyer shares with his client not just a legal or contractual relationship but also a fiduciary one. It is a cardinal principle of the profession that the lawyer should put the client interest above his own. One of the duties in furtherance of this principle is that which relates to “Conflict of Interest”. Conflict of Interest is the influence on a lawyer that exists and which can negatively affect the client or the advice that a lawyer would otherwise give.

In simple words, it is the personal interest of a lawyer in a particular matter which clouds the judgment that he requires to further his client’s interest. It is an advocate’s ethical duty to inform the client of his interest and not to accept any engagement which he may have an interest in.

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## References

- Peter MacFarlane ,The Importance of Ethics And the Application of Ethical Principles To The Legal Profession, Journal of South Pacific Law.
- Naiana Jain , Chitrakshi Singh , The Ethics and Morality of Legal Profession.

The logo of Galgotias University is a stylized, multi-colored swirl (yellow, blue, and red) that forms a circular shape. Below the logo, the text "GALGOTIAS UNIVERSITY" is written in a large, light gray, serif font, with "GALGOTIAS" on the top line and "UNIVERSITY" on the bottom line.

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