

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

**Course: Clinical-2 (Professional Ethics and Professional Accounting System)
Semester-IX (Batch: 2015-20)**

End Semester Examination: October-2019

Date: 25th October, 2019

Duration: 3 hours

Max. Marks: 50

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write anything on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.

Marks

- Q.1 In a criminal proceeding, the defense advocate had a verbal duo with the prosecution side. It was about a rape-case. Defense advocate during the course of proceedings made a statement that – ‘as the victim-girl and client-accused had developed-friendship already, the causes of rape become less significant to argue for’. The sessions-judge took this statement seriously and made an oral comment that ‘This is being sexist. I feel bad. Please take back these words and ideas’.

(10)

It was found out during the proceedings that the defense advocate has this tendency to bring this kind of statement in relation to violence against women. Registrar of the court too intervened when called upon who then expressed this as a general concern raised many times by many advocates but unable to take the matter to a logical outcome considering the seniority and popularity of the defense advocate, as well as the limited role of the registrar of the court in relation to advocate. The sessions-judge thought for a while and asked the registrar of the court to issue a show-cause notice *suo motu* to the defense advocate to submit his explanations for alleged professional misconduct arising out of biased or negative views casually made on women and violence against women that are disrupting the proceedings. This was duly communicated to the State Bar Council who conducted the disciplinary proceedings subsequently.

State Bar Council conducted a disciplinary proceeding following a due process and passed an order with a ‘reprimand for professional misconduct’ as to ‘not to conduct himself in this manner’ under Section 35(b) of the Advocate’s Act 1961. The defense advocate argued against this order in his appeal to the Bar-Council of India that ‘it was only an opinion as a passing remark that he made that statement and it is not a legal argument advanced in the court of law’. Members of the Bar Council of India in the disciplinary committee expressed that ‘it is not about passing statements but its repeated continuity’.

Does this act of the advocate attract elements of ‘Professional Misconduct’? Can ‘passing comments’ which are not part of the arguments but alleged to be biased or negative views and found to be recurring be considered as part of ‘Professional Misconduct’ in the absence of a clear definition for the term ‘misconduct’ under Section 35 of the Advocates Act 1961? What are your views and explain your perspectives with holistic view of legal profession keeping in mind the Indian context and circumstances.

- Q.2 (a) Section 29 of the Advocates Act 1961 reads as follows: *Advocates to be the only recognised class of persons entitled to practise law.—Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates.* (10)

What do you mean by the term 'practice the profession of law'? Is 'practice the profession of law' restricted only to the litigations in the court of law? Explain this legal provision in the light of Alternative Dispute Resolution (ADR) and multidisciplinary realms of knowledge that are entering the domain of legal knowledge while practicing the profession of law like sociology, science and technology, psychology, world trade, globalization etc.

Or

- (b) Explain your holistic view of legal profession based on the facts given below along with the order of preference from the following five reasoning.

You are interviewed in a national television channel for your contribution to legal profession for more than 5 decades. Law students, advocates, judges and businesspersons eagerly wait to watch your interview. During the course of your interview, interviewer asked you – "What was your worst decision-making in relation to a case which on hindsight you regret now that such a case should not have been taken by you?"

- (i) If I have one – I will tell and explain how 'I was wrong'.
- (ii) If I have one – I will not tell as it can lead to 'a bad social image'.
- (iii) If I have one – I will still hide it and say 'I do not remember'.
- (iv) If I have one – I will still hide it and make a face to say – 'none'.
- (v) If I have one – I will still say 'no comments'.

- Q.3 (a) Justice V. R. Krishna Iyer in a landmark judgment of *V. C. Rangadurai vs D. Gopalan* (1979 AIR 281, 1979 SCR (1)1054) made the following statement while explaining punishments for professional misconduct of an advocate under the Advocate's Act, 1961. (10)

"Punishment has a functional duality-deterrence and correction. But conventional penalties have their punitive limitations and flaws, viewed from the reformatory angle. A therapeutic touch, a correctional twist, and a locus penitentiae, may have rehabilitative impact if only Courts may experiment unorthodoxly but within the parameters of the law. [Legal provision]...has a mechanistic texture, a set of punitive pigeon holes, but words grow in content with time and circumstance, that phrases are flexible in semantics and the printed text is a set of vessels into which the court may pour appropriate judicial meaning. That statute is sick which is allergic to change in sense which the times demand and the text does not countermand. That Court is superficial which stops with the cognitive and declines the creative function of construction".

Which one will you choose – the deterrent or corrective model or both as a model in relation to Professional Misconduct under the Advocate's Act, 1961? Explain with illustrations as to how to bring ethical behaviors among the advocates.

Or

- (b) Explain the importance of 8 lamps of advocacy.

Q.4 Do you agree with the following provision of the Advocate's Act 1961? (10)

(a) Section 16

Senior and other advocates.—

(1) *There shall be two classes of advocates, namely, senior advocates and other advocates.*

(2) *An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability [standing at the Bar or special knowledge or experience in law] he is deserving of such distinction.*

(3) *Senior advocates shall, in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe.*

(4) *An advocate of the Supreme Court who was a senior advocate of that Court immediately before the appointed day shall, for the purposes of this section, be deemed to be a senior advocate.*

Does this provision encourage discrimination among the advocate's fraternity? Give 5 illustrations or suggestions. Explain.

Or

(b) Section 52

Saving. — Nothing in this Act shall be deemed to affect the power of the Supreme Court to make rules under article 145 of the Constitution—

(a) *for laying down the conditions subject to which a senior advocate shall be entitled to practise in that Court;*

(b) *for determining the persons who shall be entitled to 1 [act or plead] in that Court.*

Is this provision *ultra-vires* of the Constitutional Law of India? Can the Supreme Court of India being the apex court of the country decide their professional rules of practice? Explain.

Q.5 (a) You have been shortlisted for an interview for the post of 'Professional Ethics Compliance Officer' by a 'National Commission for Professional Ethics Compliance' constituted as a statutory body under a new Parliamentary enactment i.e. the 'Professional Ethics Compliance Act, 2019'. The roles and responsibilities of the Professional Ethics Compliance Officer is to identify areas of ethical practices and to suggest measures to increase integrity of professional ethics in legal profession. Enlist 5 areas of ethical practices in legal profession and suggest measures to prevent unethical behavior. (10)

Or

(b) Do you agree with the fly-in and fly-out model of legal practice for foreign law firms in India? Explain the challenges of this model for Indian legal fraternity to accept or deny the entry of foreign law firms in India and suggest solutions to surmount the same.
