

Unit -1

INTRODUCTION, PROFESSIONAL PRACTICE LAW AND ETHICS

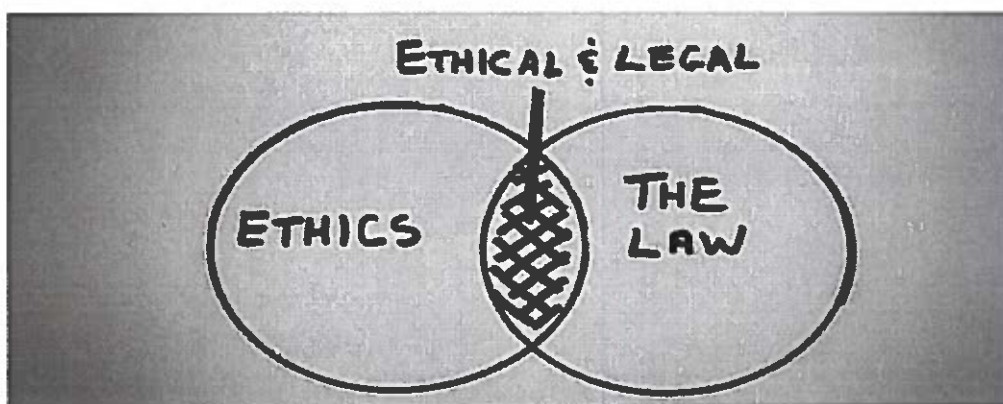
1.0 INTRODUCTION

Professional ethics encompasses an ethical code governing the conduct of persons engaged in the practice of law as well as persons engaged in the legal sector. All members of the legal profession have a paramount duty to the court and towards the administration of justice. This duty prevails over all other duties, especially in the circumstances where there may be a conflict of duties. It is important that legal practitioners conduct themselves with integrity, provide proper assistance to the court, and promote public confidence in the legal system. In carrying out their duties, they are required and expected to deal with other members of the legal profession with courtesy and integrity.^[1] Advocates, apart from being professionals, are also officers of the court and play a vital role in the administration of justice.

Accordingly, the set of rules that govern their professional conduct arise out of the duties that they owe to the court, the client, their opponents and other advocates. Rules on the professional standards that an advocate needs to maintain are mentioned in Chapter II, Part VI of the Bar Council of India Rules. These Rules have been provided under section 49(1)(c) of the Advocates Act, 1961.

1.1 PROFESSIONAL PRACTICE LAW AND ETHICS

The fundamental aim of legal ethics is to maintain honor and dignity of the legal profession to ensure the spirit of friendly co-operation, honorable and fair dealing of the counsel with his clients as well as to secure the responsibilities of the lawyers towards the society.



1.2 DEFINITION OF ETHICS

The English word *ethics* is derived from the Ancient Greek word *ēthikós* (ἠθικός), meaning "relating to one's character", which itself comes from the root word *ēthos* (ἦθος) meaning "character, moral nature".^[2] This word was transferred into Latin as *ethica* and then into French as *éthique*, from which it was transferred into English.

Rushworth Kidder states that "standard definitions of *ethics* have typically included such phrases as 'the science of the ideal human character' or 'the science of moral duty'".^[3] Richard William Paul and Linda

Elder define ethics as "a set of concepts and principles that guide us in determining what behavior helps or harms sentient creatures".^[7] The *Cambridge Dictionary of Philosophy* states that the word "ethics" is "commonly used interchangeably with 'morality' ... and sometimes it is used more narrowly to mean the moral principles of a particular tradition, group or individual."^[8] Paul and Elder state that most people confuse ethics with behaving in accordance with social conventions, religious beliefs, the law, and do not treat ethics as a stand-alone concept.

1.3 PROFESSIONAL ETHICS

Professional ethics are principles that govern the behaviour of a person or group in a business environment. Like values, professional ethics provide rules on how a person should act towards other people and institutions in such an environment.

In life our behavior is governed by different norm systems. The word NORM comes from Latin "NORMA"= yardstick. Norms dictate what we "ought" or "ought not" to do. The norm systems governing the behaviour of a professional are:

•Individual morality

Refers to individual values of a specific person and what they believe to be right. Individual morality is influenced by how a person was raised. It is their personal value system. The sanction for disobeying one's individual morality is a guilty conscience.

•Positive morality

This set of norms represents what is considered "right" in society at a particular time. The sanction for failure to obey positive morality is social sanction.

•Law (Legal Norms)

Laws protect society and prevent anarchy by regulating behavior. Public Law – also referred to as criminal law: between the state and individual. Private Law – also referred to as contractual law and focuses on the relationship between persons. Formal Law and Common Law find expression in the reported judgments of courts.

•Professional Ethics

Professionals are a group of people who earn a living by undertaking a common activity and who regulate most of this themselves. Firstly they must form a constitution, e.g. SAIMEchE, and secondly they must publish a professional code of rules or an ethical code of conduct. This code must be in line with the law and is often more restrictive than the law.

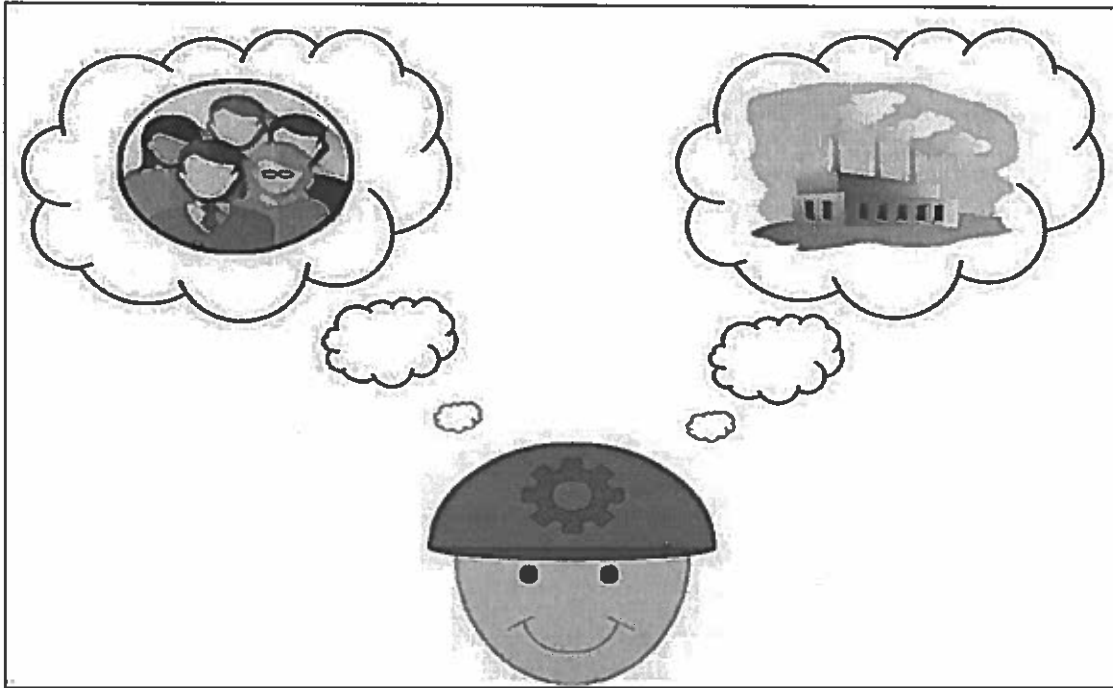
1.4 ENGINEERING ETHICS

Ethics are principles followed depending upon the moral responsibility that a person feels. The study of related questions about moral ideals, character, policies and relationships of people and organizations involved in technological activity, can be termed as **Engineering ethics**.

An engineer whether he works individually or works for a company, has to go through some ethical issues, mostly under the conditions such as, conceptualization of a product, issues

arising in design and testing departments, or may be on the issues involving the manufacturing, sales and services. Questions related to morality also arise during supervision and team works.

The ethical decisions and moral values of an engineer need to be considered because the decisions of an engineer have an impact the products and services - how safe they are to use, the company and its shareholders who believe in the goodwill of the company, the public and the society who trusts the company regarding the benefits of the people, the law which cares about how legislation affects the profession and industry, the job and his moral responsibilities and about how the environment gets affected, etc.



Not only an engineer, but everyone has to follow a set of morals in order to keep away from getting morally degraded. Our behavior should include the following –

- Respecting others and ourselves.
- Respecting the rights of others.
- Keeping promises.
- Avoiding unnecessary problems to others.
- Avoiding cheating and dishonesty.
- Showing gratitude towards others and encourage them to work.

Morality commands respect for persons, both others and ourselves. It involves being fair and just, meeting obligations and respecting rights and not causing unnecessary harm by dishonesty and cruelty or by hubris.

Steps to Deal with Issues

Whenever there occurs an issue, one should possess a few skills in order to sort out the problem. The issues that engineers face, have to be dealt with patience and few moral goals have to be kept in mind while dealing with such issues. They are as follows –

- **Moral Awareness** – One should be able to recognize the moral problems and issues that occur in Engineering. The analysis on the problem is necessary in order to differentiate and judge according to ethics or according to the rules to follow.
- **Cogent Moral Reasoning** – In order to come to a conclusion on an issue, the argument has to be assessed and comprehended. The argument on both sides has to be considered with all the probabilities and the nature of the argument should be logical and moral.
- **Moral Coherence** – After having gone through all the logical and moral facts, consistent and comprehensive view points are to be formed based upon a consideration of relevant facts.
- **Moral Imagination** – The moral issues and the practical issues have to be dealt separately. Alternative responses are to be found out for dealing with moral issues while creative solutions should be found out for practical difficulties.
- **Moral Communication** – The language to communicate about one's moral views should be so precise and clear, that the expression or words should not alter the original meaning.

Though one has all these moral goals, the ethical reasoning for achieving moral conduct with responsibility and commitment is obtained by a few skills that are described below.

Important Skills for Ethical Reasoning

Let us now discuss the important skills for ethical reasoning –

- **Moral Reasonableness** – The ability and willingness to be morally reasonable that one should have while dealing such issues. Unless one is willing and improve such ability, justice cannot be done.
- **Respect for Persons** – The persons involved in the issue, should be treated with genuine concern by one. Such concern should also be there with oneself along with being there for others.
- **Tolerance of diversity** – One should have a broader perspective towards ethnic and religious differences that the people have. Every person differs with another when compared on grounds of moral reasoning. The acceptance of those differences is really important.
- **Moral hope** – The moral conflicts can be resolved by using better communication and having rational dialogue which is evident-based and open-ended which is acceptable and appreciable by both the parties.
- **Integrity** – The moral integrity has to be maintained. Being honest and having strong moral principles helps one to resolve an issue in an efficient manner. An individual also needs to consider other's professional life and personal convictions while solving a problem.

1.5 PERSONAL ETHICS

Personal ethics are moral guidelines that can help you through tough situations and make the best decisions. You are likely to use your personal ethics to develop your career and handle many different workplace scenarios. You can develop a clear and effective personal ethics statement that outlines the values you practice in professional settings. In this article, we discuss what personal ethics is, describe how to write a statement and provide a sample to help you craft your own.

What are personal ethics?

Personal ethics is the code of ethical guidelines that guide you in your personal life. They often develop from your core values and work ethic. Your personal ethics can, and likely will, contain common ethical guidelines that other people share, but they will vary in their level of importance and how to maintain them.

Some common personal ethics include:

- Integrity
- Selflessness
- Honesty

The difference between personal and professional ethics

Professional ethics refer to the guidelines you follow in respect to the interactions and workflows in your professional life. While personal ethics may influence your professional ethics, there may be instances where the two clash causing a moral conflict.

Here's an example of when personal and professional ethics may clash:

A teacher may suspect one of her students is being neglected at home. Instead of addressing concerns directly with the student or the parent, the teacher may have to follow the process for raising concerns outlined by the school district.

What is a personal ethics statement?

A personal ethics statement is a written declaration of your closely held ethical principles.

Personal ethics statements can be developed for several reasons, including:

College applications

Many colleges are asking for written personal ethics statements from applicants to better understand the qualities and characteristics of prospective students. These statements can help students stand out from the other applicants when their personal ethics align with that of the university or college. Plus, many colleges are making it a requirement in the application process so they can take a closer look at behavior and motivations.

Job applications

Some companies are also asking for personal ethics statements because jobs are becoming more competitive. Personal ethics statements can be a part of the process for any job, but it is

most common for leadership positions. Companies frequently look to improve and shape the quality of their leadership, which results in asking candidates to detail their personal ethics and apply them to their work and leadership potential.

Performance evaluations

Companies also ask for personal ethics statements at performance reviews to deeply analyze employees' actions and how they implement the company's—and their own—ethics while on the job. These statements can be very telling since they show whether an employee understands the ethical implications of their actions and are working toward better alignment with the company's values.

Benefits of having a personal ethics statement

There are many benefits to having a personal ethics statement for your career. Defining your personal ethics makes it easier to talk about in a well-thought-out manner, which may improve your performance in an interview. Personal ethics statements also:

Help you understand your priorities

Having a clear understanding of what matters most to you can assist you in advancing your career. Defining your personal ethics statement can help you understand your priorities. If you prioritize putting other people's needs first, then you are more likely to be happy in a job where you help people.

If you prioritize doing a good job and being highly productive, then you may make a good business leader. These differences in your priorities can help you determine what type of job is best for you and what jobs you should avoid because of conflicts with your personal ethics.

Make decisions easier

In addition to clarifying your priorities, having a personal ethics statement can also make decisions easier. There are many situations where you will need to decide on the right course of action. This is especially true if you lead a team or are a high-level executive in your company. Having a list of criteria can make weighing your options easier.

Improve goal-setting

Once you know what you will and won't focus on, you can use your personal ethics statement to set goals for your development. You can identify which values matter most to you and identify opportunities and future steps you should pursue.

Refine your leadership style

Creating a personal ethics statement is an effective way to help advance your career, especially when applying to a leadership position or a position that requires a strong set of personal ethics. Knowing what you value and what you stand for can help you decide on a leadership style that enables you to lead teams to progress and success.

How to write a personal ethics statement

Follow these tips to write a clear and effective personal ethics statement:

1. Consider your audience.
2. Identify your goals.
3. List what influences you.
4. Write about your beliefs and practices.
5. Clarify your "why."

1. Consider your audience

How you write your statement changes based on your audience. Writing a statement that other people read requires you to be more structured and thorough with your explanations so that readers can understand your goals, values and mission. Be sure to use terms and phrases that your reader is likely to be familiar with. Try to be as specific as possible when outlining goals to ensure all relevant context is included. Also, simple, direct language can improve your statement's readability for your reader and you.

After understanding who will be reading your personal ethics statement, it is important to determine your personal ethics statement's purpose. You may use it as a personal reminder as you take steps in developing your career. You may also include it in your portfolio or use it to write your resume objective and cover letter as you apply for jobs. Understanding the purpose of your statement can also help you determine your entire audience.

2. Identify your goals

Defining the steps you want to take and the successes you want to have can help you refine your personal ethics. If you have a specific job or industry you want to serve in, you may need to identify what ethics are commonly held to succeed in that position. You can assume those ethics to better align yourself with that role, or you can research roles that better match the current ethical values you hold.

In your statement, you can phrase your personal ethics in terms of how they relate to specific steps you want to take in your career, including references to leadership, collaboration and social causes.

3. List what influences you

Another effective way to develop your personal ethics statement is to list what influences you. These are the influences that help you develop your understanding of ethics and the principles you chose. For some people, personal traits can also be a significant influence. You can identify the characteristics you have, such as elements of your personality that inform the choices you make.

You can also determine people in your life who have helped—or continue to help—you develop those characteristics. Perhaps there are significant events in your personal or professional life that also influence your goals, values and mission. Consider listing these elements and how they impact you.

4. Write about your beliefs and practices

A significant part of creating your personal ethics statement is to come up with easy-to-understand examples. You can do this by writing about your beliefs and practices. Your beliefs help shape your ethics and can be a defining part of your identity. So, they can be included in your statement as a way of solidifying your thoughts on ethics.

5. Clarify your “why”

It is important to clarify why you chose the ethical principles that you have. Everyone develops an ethical code through experiences. If you want people to understand your ethics, you can provide a clear example of why your ethical principles are important or how you use them in your career development. Focus on the core values that influence your daily actions and shape your personal ethics. This will make it easy for other people to not only understand your personal ethics statement but also to understand why your ethics are important.

Sample personal ethics statement

Here is a personal ethics statement example you can use to write your own:

Overview

As a leader with 10 years of experience in the IT industry, my personal ethics developed from a need to keep teams focused and moving in the right direction. Every aspect of my leadership is defined by the core values of Respect for Others, Leading by Example, and Putting the Needs of Others First. Through these values, I can lead effectively and ethically.

Respect for others

As a leader, I strive to show and promote respect for others wherever possible. It is not acceptable for team members to insult each other and show a general lack of respect. If I expect them to work together, then there must be mutual respect between them even if they don't like each other. This is a requirement of myself and all of my teammates to keep the team together.

Leading by example

Every leader should lead by example in as many ways as possible. This does not mean that I have to be the most tech-savvy or specially-skilled person on my team. Rather, it means that I must embody the qualities I expect to see in others. That way, they will be more likely to embody those traits regularly.

Prioritizing the needs of others

When possible, put the needs of others first. That means providing help, understanding, and encouragement that they need when possible. This helps teams work together more effectively and builds tighter relationships between team members. • Loyalty

- Equality and fairness
- Empathy and respect
- Self-respect

1.6 CODE OF ETHICS

What Is a Code of Ethics?

A code of ethics is a guide of principles designed to help professionals conduct business honestly and with integrity.

A code of ethics document may outline the mission and values of the business or organization, how professionals are supposed to approach problems, the ethical principles based on the organization's core values, and the standards to which the professional is held.

A code of ethics, also referred to as an "ethical code," may encompass areas such as business ethics, a code of professional practice, and an employee code of conduct.

Understanding Codes of Ethics

Business ethics refers to how ethical principles guide a business's operations. Common issues that fall under the umbrella of business ethics include employer-employee relations, discrimination, environmental issues, bribery, insider trading, and social responsibility.

While many laws exist to set basic ethical standards within the business community, it is largely dependent upon a business's leadership to develop a code of ethics.

Both businesses and trade organizations typically have some sort of code of ethics that their employees or members are supposed to follow. Breaking the code of ethics can result in termination or dismissal from the organization. A code of ethics is important because it clearly lays out the rules for behavior and provides the groundwork for a preemptive warning.

Given the importance of climate change and how human behavior has led to severely impacting the climate, many companies have taken to include climate factors in their code of ethics. These principles include manners in which the company is dedicated to operating sustainably or how they will shift to doing so.

In many cases, this commitment to sustainability adds to the costs of a company, but because consumers are becoming more focused on the types of businesses they choose to engage with, it is often worth the cost to maintain a good public image.

Regardless of size, businesses count on their management staff to set a standard of ethical conduct for other employees to follow. When administrators adhere to the code of ethics, it sends a message that universal compliance is expected of every employee.

Types of Codes of Ethics

A code of ethics can take a variety of forms, but the general goal is to ensure that a business and its employees are following state and federal laws, conducting themselves with an ideal that can be exemplary, and ensuring that the business being conducted is beneficial for all stakeholders. The following are three types of codes of ethics found in business.

Compliance-Based Code of Ethics

For all businesses, laws regulate issues such as hiring and safety standards. Compliance-based codes of ethics not only set guidelines for conduct but also determine penalties for violations.

In some industries, including banking, specific laws govern business conduct. These industries formulate compliance-based codes of ethics to enforce laws and regulations. Employees usually undergo formal training to learn the rules of conduct. Because noncompliance can create legal issues for the company as a whole, individual workers within a firm may face penalties for failing to follow guidelines.

To ensure that the aims and principles of the code of ethics are followed, some companies appoint a compliance officer. This individual is tasked with keeping up to date on changes in regulation codes and monitoring employee conduct to encourage conformity.

This type of code of ethics is based on clear-cut rules and well-defined consequences rather than individual monitoring of personal behavior. Despite strict adherence to the law, some

compliance-based codes of conduct do not thus promote a climate of moral responsibility within the company.

Value-Based Code of Ethics

A value-based code of ethics addresses a company's core value system. It may outline standards of responsible conduct as they relate to the larger public good and the environment. Value-based ethical codes may require a greater degree of self-regulation than compliance-based codes.

Some codes of conduct contain language that addresses both compliance and values. For example, a grocery store chain might create a code of conduct that espouses the company's commitment to health and safety regulations above financial gain. That grocery chain might also include a statement about refusing to contract with suppliers that feed hormones to livestock or raise animals in inhumane living conditions.

Code of Ethics Among Professionals

Financial advisers registered with the Securities and Exchange Commission (SEC) or a state regulator are bound by a code of ethics known as a fiduciary duty. This is a legal requirement and also a code of loyalty that requires them to act in the best interest of their clients.

Certified public accountants, who are not typically considered fiduciaries to their clients, still are expected to follow similar ethical standards, such as integrity, objectivity, truthfulness, and avoidance of conflicts of interest, according to the American Institute of Certified Public Accountants (AICPA).

Example of Code of Ethics

Many firms and organizations have adopted a Code of Ethics. One good example comes from the CFA Institute (CFAI), the grantor of the Chartered Financial Analyst (CFA) designation and creator of the CFA exams. CFA Charterholders are among the most respected and globally recognized financial professionals. According to the CFAI's website, Members of CFA Institute, including CFA Charterholders, and candidates for the CFA designation must adhere to the following Code of Ethics:

- Act with integrity, competence, diligence, respect, and in an ethical manner with the public, clients, prospective clients, employers, employees, colleagues in the investment profession, and other participants in the global capital markets.
- Place the integrity of the investment profession and the interests of clients above their own personal interests.
- Use reasonable care and exercise independent professional judgment when conducting investment analysis, making investment recommendations, taking investment actions, and engaging in other professional activities.
- Practice and encourage others to practice professionally and ethically that will reflect credit on themselves and the profession.

- Promote the integrity and viability of the global capital markets for the ultimate benefit of society.
- Maintain and improve their professional competence and strive to maintain and improve the competence of other investment professionals.

What Are the Five Codes of Ethics?

All companies will have a different code of ethics with different areas of interest, based on the industry they are involved in, but the five areas that companies typically focus on include integrity, objectivity, professional competence, confidentiality, and professional behavior.¹

What Is a Code of Ethics in Business?

A code of ethics in business is a set of guiding principles intended to ensure a business and its employees act with honesty and integrity in all facets of its day-to-day operations and to only engage in acts that promote a benefit to society.

What Is a Code of Ethics for Teachers?

A code of ethics for teachers defines the primary responsibilities of a teacher to their students and the role of the teacher in the student's life. Teachers are required to show impartiality, integrity, and ethical behavior in the classroom.²

What Is an Example of a Code of Ethics?

An example of a code of ethics would be a business that drafts a code outlining all the ways the business should act with honesty and integrity in its day-to-day operations, from how its employees behave and interact with clients, to the types of individuals it does business with, including suppliers and advertising agencies.

What Is the Difference Between a Code of Ethics and a Code of Conduct?

A code of ethics is broader in its nature, outlining what is acceptable for the company in terms of integrity and how it operates. A code of conduct is more focused in nature and instructs how a business' employees should act daily and in specific situations.¹

The Bottom Line

A code of ethics is a guiding set of principles intended to instruct professionals to act in a manner that is honest and that is beneficial to all stakeholders involved. A code of ethics is drafted by a business and tailored to the specific industry at hand, requiring all employees of that business to adhere to the code.

The moral choices of businesses have evolved, from the industrial age to the modern era. In the world we live in today, working conditions, how a business impacts the environment, and how it deals with inequality are all areas that society deems important that perhaps two centuries ago it did not as much. A code of ethics helps ensure that businesses will always act with integrity.

1.7 PROFESSIONALISM

Professionalism is a powerful quality. It allows you to fulfill your role to the best of your ability. It helps you to impress and inspire others. And it gives you a deep sense of satisfaction and self-worth.

What's more, professionalism is something that everyone can aspire to from day one of their career.

In this article we explain what professionalism means today, and show you how to act and feel like a professional – wherever you work.

What Is Professionalism?

As the saying goes, **"Professionalism is not the job you do, it's how you do the job."**

Professionalism involves consistently achieving high standards, both visibly and "behind the scenes" – whatever your role or profession.

Some sectors, workplaces or roles have particular "rules" of professionalism. These may be explicit, such as an agreed dress code, or a policy for using social media. Other rules and expectations may not be written down, but they can be just as important – such as what is regarded as professional behavior at meetings, or even how people personalize their desks.

It pays to be observant, and to ask for clarification if necessary. "Fitting in" is a big part of professionalism, as it's a way to show respect, attention to detail, and a commitment to upholding agreed practices and values.

However, "being true to yourself" is just as important. True professionals don't follow rules mindlessly, and they know when and how to challenge norms. They're also flexible, and they find their own ways to do things – while still maintaining high standards.

8 Characteristics of Professionalism

What are the attributes that will mark you out as a professional? Let's look at eight key characteristics:

1. Competence

As a professional, you get the job done – and done well. Your abilities match the requirements of your role, and you often produce results that exceed expectations.

But you never plow on simply for the sake of appearances. Instead, your professionalism allows you to manage your own and others' expectations, and to ask for support when necessary.

2. Knowledge

Professionalism involves developing detailed, up-to-date knowledge, which is often highly specialized. At every stage of your career you can strive to master your role – and keep adding to what you know.

It's also important to put your knowledge into action. Being professional means feeling confident to show what you know – not for self-promotion, but to help yourself and others to succeed.

3. Conscientiousness

Professionalism involves being reliable, setting your own high standards, and showing that you care about every aspect of your job. It's about being industrious and organized, and holding yourself accountable for your thoughts, words and actions.

But don't confuse conscientiousness with working longer hours than everyone else, or obsessing about details. True professionals plan and prioritize their work to keep it under control, and they don't let perfectionism hold them back.

4. Integrity

Integrity is what keeps professional people true to their word. It also stops them compromising their values, even if that means taking a harder road.

Integrity is bound up with being honest – to yourself, and to the people you meet. Your beliefs and behaviors are aligned, and everyone can see that you're genuine.

5. Respect

Professionalism means being a role model for **politeness and good manners** – to everyone, not just those you need to impress.

What's more, you show that you truly respect other people by taking their needs into account, and by helping to uphold their rights.

6. Emotional Intelligence

To be a true professional you need to stay professional even under pressure. This takes strategies for managing your emotions, plus a clear awareness of other people's feelings. In short, **emotional intelligence is essential**.

Sometimes, professionalism means keeping your emotions in check. But at other times it's important to express your feelings, in order to have meaningful conversations or to stand up for what you believe in.

7. Appropriateness

A big part of being professional is knowing what's appropriate in different situations. It avoids awkwardness or upset, boosts your credibility, and helps you to feel secure in your role.

Appropriateness relates to outward appearances, such as dress, personal grooming and body language.

But it also covers the way you speak and write, the topics you choose to discuss, and how you behave with others.

8. Confidence

Well-founded confidence reassures and motivates other people, **boosting your ability to influence and lead**. It also pushes you to take on new challenges, because you don't fear damaging your professional reputation if things go wrong.

Professionalism makes you confident about what you're doing now, but always eager to do it better and achieve more.

How to Exhibit Professionalism

Now that we've seen the qualities that set professionals apart, let's explore ways to improve in each of these eight areas.

Improve Your Competence

Carry out a Personal SWOT Analysis to identify your strengths, weaknesses, opportunities, and threats. Then set SMART goals to plan your improvement.

Our article, 8 Ways to Prioritize Your Professional Development, shows how to lead your own learning and growth. It also explains how to work with others to boost the competence of your whole team.

Increase Your Knowledge

Don't let your knowledge and skills get outdated. Make a commitment to build expertise and to stay up-to-date with your industry.

As well as carrying out research, consider on-the-job training to maintain and develop detailed and relevant knowledge.

Use all the networking you do to stay well-informed about your industry as a whole. And see our Bite-Sized Training session, Building Expert Power, for ways to strengthen and apply your knowledge at every stage of your career.

Be Conscientious

Conscientiousness requires organization, so make regular use of To-Do Lists and Action Programs. You can also learn to be more conscientious by improving your concentration, to complete work more efficiently and accurately.

Resolve to honor your commitments and to learn from your mistakes, in order to develop strong personal accountability.

Our article, How to Be Conscientious, has a range of additional ideas for boosting this key aspect of professionalism.

Role-Model Integrity

Start by defining your own values, then spot any gaps between them and the way you actually behave. Our guide to authenticity explains why this is a lifelong

process, involving self-knowledge, willingness to reassess your priorities, and the ability to change your behavior.

Ensure that you're clear about the laws that apply to your work, as well as any policies that your organization has in place to support ethical practices. These might include guidelines for fair procurement processes, or rules about accepting gifts from clients.

Whenever possible, explain your decisions and choices carefully. And do everything you can to make it easy for others to act with integrity, too.

Promote Mutual Respect

Make it a habit to be polite and kind to everyone you come into contact with. Notice what respectful behavior looks like in any given situation.

Sometimes you might need to **develop your cultural understanding** – and perhaps do some specific research before an overseas trip or an international meeting online.

You should also learn about any differences among your own people, so that you know how to help everyone feel safe, included and respected. A professional approach like this can help to create a **culture of mutual respect**.

Develop Your Emotional Intelligence

Start by increasing your **awareness of your own emotions**.

Then work on your ability to sense other people's emotions and needs. **Active Listening** is crucial here. You can also practice seeing things from other people's point of view, so that you empathize with them, and see how best to support them.

Tip:

Emotional Intelligence can be learned like any other professional skill. There's a range of practical strategies for this in our article, **Emotional Intelligence**.

Always Behave Appropriately

This takes "**Cultural Intelligence**," driven by a commitment to respect cultural norms and thrive within different settings – which might be countries, organizations, or even different teams within one company.

It also requires understanding. Avoid making assumptions, do your research, be observant, and ask for advice if necessary. After that, it's about consistently making the effort to get your appearance, communication and behavior spot-on.

Tip:

Remember that professionalism extends to social media, where inappropriate behavior is likely to be indelible. Social events, both on- and off-line, can also be challenging. See our article, [When Work Involves Socializing](#) , for tips on having fun and staying professional.

Boost Your Confidence

If you put the advice from this article into action, you can be confident that your professionalism will shine through.

However, if confidence is one of your weaknesses, use techniques for [boosting self-confidence](#) . Many professionals also have to manage Impostor Syndrome, so you may need to keep reminding yourself that you really are worthy of your role.

Professionalism When Working From Home

When you're working from home, many professional behaviors are as important as ever. You'll likely need to be punctual with virtual meetings, for example. And you'll still have to handle information securely.

But other "rules" may need to change, such as dress codes, working hours, and tolerance of unexpected interruptions! More than ever, clarity around expectations – for everyone – is key.

Our article, [Working From Home](#) , has practical advice about staying productive and professional while also looking after your personal needs.

Key Points

Professionalism involves consistently achieving high standards, both in the work you do and the way you behave.

Being professional helps you to achieve high-quality results, while impressing and inspiring others – and feeling good about yourself.

The eight core characteristics of professionalism are: Competence, Knowledge, Conscientiousness, Integrity, Respect, Emotional Intelligence, Appropriateness, and Confidence.

By finding ways to strengthen each of these attributes, you can become confident to act professionally wherever you find yourself working.

These qualities are particularly important when the normal "rules" of professionalism are blurred, such as when you're working from home.

1.8 PROFESSIONAL RESPONSIBILITY

The obligation of lawyers to adhere to rules of professional conduct.

As members of a profession and as officers of the court, lawyers have the responsibility of following rules of professional conduct that are mandated either by a state legislature or by the highest court in the state. Rules of professional conduct govern both the public and the private behavior of lawyers. Because they are licensed to practice by the states, lawyers who violate rules of professional conduct are likewise disciplined by the states, not the federal government. The punishment for violating a state rule of professional responsibility ranges from private or public reprimand to suspension or disbarment (permanent disqualification from practicing law in the state). To the limited extent that they practice law, judges are subject to the state code of professional conduct in addition to a code of judicial conduct.

The American Bar Association (ABA) formulated the Model Rules of Professional Conduct in 1983 to provide uniformity and consistency in defining the professional responsibilities of lawyers. Though the ABA has no power to enforce the model rules, they serve as a guide for states in crafting rules of conduct.

History

The public and the legal profession have long sought to prescribe ethical conduct for lawyers. Legal advocates existed in Greece as early as the fourth century b.c., and in first-century Rome, legal advisers and advocates began to play an active role in the formulation of systematized courts and the conduct of court operatives.

Advances in legal ethics made by legal advocates in Rome disappeared with the fall of the Holy Roman Empire and the onset of the medieval period in Europe. Legal conduct came under some scrutiny again in the twelfth century in Europe's emerging schools and universities, after William the Conqueror developed England's organized courts and jury trials. However, the ruling class dominated these medieval courts, and legal ethics remained more theoretical than practical long past the medieval period.

The emergence of ethical standards for lawyers in colonial America was gradual and local. Most colonies discouraged, and some colonies expressly prohibited, the practice of remunerated legal representation. Self-representation was the norm, and this obviated the need for a code of professional conduct.

The U.S. Constitution was an important source for the eventual formation of ethical codes for lawyers and judges. Article III of the Constitution contains substantive rules relating to law and

the courts, and it establishes the judiciary as an independent government power designed to check the executive and legislative branches. In addition, many of the Constitution's amendments address specific legal processes. The sixth amendment, for example, sets forth general rules in criminal cases, such as the requirement of representation for defendants in criminal prosecution.

Professional associations and ethical codes for lawyers and judges began to appear in the United States in the early 1800s. States formed bar associations in the early 1800s to organize and facilitate the legal profession. The state bar associations influenced the U.S. legal system in a variety of ways and exerted control over its important players by regulating the public and private conduct of lawyers and judges.

When the u.s. civil war ended in 1865, lawyers flooded the Southern states to take part in Reconstruction. The questionable ethics and aggressiveness of some of these lawyers caused Southern legislators to call for the regulation of lawyers. In 1887, the Alabama Bar Association adopted the first comprehensive code of ethics. Other states followed suit.

The American Bar Association was formed in Saratoga, New York, on August 21, 1878, by a group of 289 lawyers. For many years the ABA examined and debated the various state codes of ethics and, in 1908, adopted and promoted the Canons of Professional Ethics. The 32 canons were intended to be model rules that states could adopt as regulations of legal conduct. Courts or legislatures in most states adopted this first set of standards. However, legal professionals criticized the canons as being incoherent and incomplete, and the ABA replaced them in 1969 with the Model Code of Professional Responsibility.

The model code was also criticized. An amalgam of general canons, aspirational ethical considerations, and disciplinary rules, it was sometimes contradictory and often perplexing. In 1983, the ABA replaced the code with the Model Rules of Professional Conduct. The model rules consist only of enforceable rules and explanatory comments. The ABA periodically amends the model rules to make adjustments for evolving norms and changes in technology. Most states have adopted the ABA Model Rules of 1983. States that have not adopted the ABA Model Rules use the ABA Model Code of Professional Responsibility of 1969 and supply their own changes.

In 1998, the American Law Institute approved the Restatement of the Law Governing Lawyers. This project began in 1986 as an effort to address constraints imposed upon lawyers by law. This restatement does not constitute authority in any state, but rather is designed to assist courts and ethics commissions make decisions regarding the law as applicable to attorneys. The restatement complements, rather than replaces, the Model Rules, Model Code, and other state ethics codes. It draws heavily on prior decisions made by the courts and state ethics commissions.

Areas covered by the Restatement of the Law Governing Lawyers include the regulation of the legal profession; client-lawyer relationships; lawyer civil liability; confidential client information; representation of clients; and conflicts of interest. In the short period of time after

its approval, several courts applied the provisions of the restatement. The restatement has already proven particularly persuasive in resolving issues that are not addressed by ethics codes.

Areas of Professional Responsibility

Each of the many areas of lawyer responsibility contains a discrete category of ethical concerns. These areas can be organized as the lawyer-client relationship, the lawyer as counselor, the lawyer as advocate, transactions with persons other than clients, law firms and associations, public service, information about legal services, and the integrity of the profession. The rules of conduct that govern these areas are subject to interpretation, and knowledge of what specific conduct has been found to violate a rule is often necessary for a complete understanding of the rule's meaning.

Lawyer-Client Relationship A lawyer must follow certain ethical standards when working with a client. A lawyer must be reasonably skilled in order to represent a client on a legal matter. Though a lawyer may work on legal matters unrelated to his or her usual practice, they may not charge the client for extra time studying to become competent in that area of the law.

A lawyer must perform lawyerly duties diligently and promptly and must openly communicate with the client. A lawyer must also abide by the client's decision regarding the scope of representation and may charge only reasonable fees. Several states have adopted rules that prohibit a lawyer from having a sexual relationship with a client.

One of the most critical elements of professional responsibility is keeping confidential all information regarding representation of the client. However, in 2003, the ABA amended its confidentiality rules to now require lawyers to report any corporate crimes and fraud that they learn of during the course of the attorney-client relationship. In addition, a lawyer must avoid representing others with interests that conflict with those of the client.

The issues of confidentiality and the prohibition of conflicts of interest illustrate the complexity of the rules on lawyer-client relationships. Not only may a lawyer not represent interests that conflict with those of the client, but he may not represent interests that conflict with those of other clients in the law firm. For example, an attorney may not represent a defendant if another attorney in the same firm is representing the plaintiff in the same case. A firm may represent interests adverse to those of a former client if the lawyer who represented the former client is no longer with the firm. However, a firm may not represent interests adverse to those of a former client if any remaining lawyers possess confidential information regarding the particular legal matter concerning that client. But if formerly confidential information has become publicly known, the firm may represent the adverse interest.

Lawyer as Counselor A lawyer serves varied roles, including that of counselor. As a counselor, a lawyer renders candid advice that may refer to factors apart from the law, including moral, economic, social, and political issues relevant to the client's situation. A lawyer may act as a mediator between multiple clients but only if each client consents and the mediation can be

done impartially without affecting the lawyer's responsibilities to any of the clients. Finally, with the consent of the client, a lawyer may arrange an evaluation of the client for use by a third party, usually an expert trial witness.

Lawyer as Advocate A lawyer is required to be an advocate for the client. This is an important obligation because U.S. law is based on the adversary system, which gives competing litigants the principal responsibility for gathering evidence, formulating legal theories, and presenting evidence and theories at trial to a judge and jury. However, a lawyer must not go beyond the ethical boundaries of professional responsibility in a quest for legal victory. A lawyer cannot make frivolous claims or defenses, knowingly make false representations to a court, or falsify or obstruct access to potential evidence. Likewise, a lawyer must disclose all the material facts and legal precedent necessary to avoid misleading a court. A lawyer also has the responsibility of expediting litigation.

A lawyer must seek to preserve the integrity of the judicial process. Therefore, a lawyer cannot try to influence a judge, juror, or prospective juror through improper communications or make public comments on a case if the lawyer knows that the statements will prejudice the proceeding. If a lawyer knows that he will be a necessary witness at trial, he cannot serve as an advocate at the trial.

A prosecutor in a criminal case has special responsibilities. The prosecutor may not bring legal action if he knows that the charge is not supported by probable cause or seek to obtain the waiver of important pretrial rights from an unrepresented defendant. The prosecutor must make reasonable efforts to allow a defendant access to counsel and must also timely disclose exculpatory or mitigating evidence and information to the defense. (Exculpatory evidence tends to clear the defendant; mitigating evidence reduces the degree of blame or fault attributable to the defendant.) The prosecutor may not subpoena a lawyer to present information on a past or present client. However, with the permission of the court after an adversarial proceeding, the prosecutor may subpoena a lawyer if the prosecutor reasonably believes that the information sought is not a privileged lawyer-client communication, the evidence is essential to the investigation or prosecution, and there is no feasible alternative way to obtain information.

Prosecutors must also refrain from making public comments that might prejudice a judicial proceeding or heighten public condemnation of the accused. However, prosecutors do not violate their professional responsibility when making public statements for legitimate purposes, such as to provide necessary public information or to aid law enforcement. For example, if an accused escapes from custody and the prosecutor believes that the accused is armed and dangerous, the prosecutor may issue a warning to that effect, even though such a warning will increase public hostility against the accused.

Transactions with Persons Other than Clients A lawyer must act ethically when communicating with persons other than his client in the course of representing the client. This means that the lawyer must communicate truthfully and fairly. Thus, a lawyer must not

knowingly make a false statement or assist crime or fraud by failing to disclose a material fact to a third party. A lawyer is prohibited from communicating with the client of an opposing party and may not state or imply that he is disinterested. In communicating with third parties, the lawyer must make an effort to explain his role to avoid a misunderstanding and must not illegally obtain evidence from third parties. Finally, a lawyer violates his professional responsibility when using legal devices for the sole purpose of embarrassment, delay, or burden.

Law Firms and Associations With the decline of the sole practitioner and the rise of law firms, lawyers in law firms have special ethical considerations. Because a firm's senior attorneys, partners, or shareholders are responsible for the misconduct of subordinate lawyers and nonlawyer assistants, the senior members must make reasonable efforts to ensure the firm's conformity with all the rules of professional conduct.

Some practices involving the internal affairs of law firms are prohibited. For example, a lawyer cannot ethically share legal fees with nonlawyers, except to issue funds to client survivors and to pay wages to employees. A lawyer's professional judgment must not be directed or regulated by a person who employs the lawyer to perform legal services for a third party. In addition, a lawyer cannot offer to make or actually make an agreement with a client restricting his own right to practice upon termination of the agreement or base a settlement between private parties on an agreement restricting another lawyer's right to practice.

Public Service As a professional, a lawyer is expected to contribute to the community by offering legal services to those persons who cannot afford to pay regular fees. The rules of professional responsibility do not require lawyers to render pro bono (free) legal services, but many states set an aspirational goal of a certain number of hours of pro bono service per year. A lawyer who fails to provide such services is not subject to discipline. However, some courts may require a lawyer to accept an unpaid appointment in a certain case.

A court may also order a lawyer to represent a particular client, with the lawyer's fees paid by the government. In such a case, the lawyer may decline the appointment only for good cause. Good cause exists if the appointment would violate the rules of professional conduct or a law or would place an unreasonable financial burden on the lawyer. It also exists if the case is so repugnant to the lawyer as to impair the lawyer's relationship with the client or ability to represent the client.

A lawyer may join a legal organization apart from the lawyer's firm. Whether these organizations are concerned with administering legal services or legal reform, the lawyer must not act in such a way as to adversely affect the interests of a client.

Information about Legal Services For many years it was considered unethical for a lawyer to advertise. The profession sought to eradicate the image of lawyers as "ambulance chasers," intent on benefiting from the suffering of others. However, in the 1970s the U.S. Supreme Court struck down rules of professional conduct that banned all lawyer advertising, ruling that absolute prohibition violated the first amendment with *Bates v. State Bar of Arizona*,

433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977). Nevertheless, lawyer advertising may be regulated by the state, and lawyers who violate such rules may be disciplined.

Lawyers may not make unsupported comparisons to other lawyers or create unjustified expectations. Though rules of conduct expressly approve advertising, they discourage direct contact with prospective clients when a significant motive is pecuniary gain. A lawyer may contact a family member or former client but may not solicit business from anyone if the communication involves coercion or if the prospective client has indicated a desire that the solicitation cease.

Lawyers may not advertise as recognized or certified specialists unless they are patent lawyers, admiralty lawyers, or attorneys certified by an appropriate state regulatory authority. If a lawyer is certified as a specialist by an organization that is not recognized by the state, the lawyer may include the certification in advertising if it is accompanied by a statement that the jurisdiction has no procedure for approving the organization.

Integrity of the Profession Lawyers have the responsibility of maintaining the integrity of the legal profession through their personal conduct and through the monitoring of other lawyers. A lawyer or an applicant for admission to the bar is prohibited from knowingly making a false statement of material fact, or failing to disclose material facts, to the members of the admissions board or to a disciplinary authority. For example, an applicant for admission to the bar violates his professional responsibility by failing to reveal a criminal arrest or conviction.

A lawyer must preserve the integrity of the judicial system. Therefore, it is professional misconduct to make a false or reckless statement concerning the quality or integrity of a judge, adjudicative officer, or candidate for judicial or legal office. A lawyer does have the obligation to report to the appropriate authority his knowledge of conduct that raises a substantial question as to another lawyer's honesty, trustworthiness, or fitness as a lawyer.

Professional misconduct encompasses a violation or attempted violation of the rules of professional responsibility, or the knowing assistance or inducement of a violation of the rules. Professional misconduct is also the commission of a criminal act reflecting adversely on the lawyer's fitness to practice law and any conduct involving dishonesty or prejudice to the administration of justice. For example, a lawyer who is convicted of deliberately failing to file an income tax return will likely be charged with and found guilty of professional misconduct.

Enforcement of Professional Responsibility

In every state the supreme court or legislature has created a committee or board that is authorized to enforce state rules of professional conduct. This committee examines allegations of a lawyer's professional misconduct and recommends whether to reprimand him, suspend his license, place him on supervised or unsupervised probation, or permanently revoke his license.

The specific procedures on professional discipline vary from state to state, but every state

allows for court review of a conduct committee's recommendation to discipline a lawyer. When a lawyer's license is suspended, the lawyer may petition the state supreme court for readmission to the bar, after a time specified by the state rules. The supreme court will ask the professional responsibility committee for its recommendation on reinstatement.

1.9 CONFLICT OF INTEREST

- 2 A **conflict of interest (COI)** is a situation in which a person or organization is involved in multiple interests, financial or otherwise, and serving one interest could involve working against another. Typically, this relates to situations in which the personal interest of an individual or organization might adversely affect a duty owed to make decisions for the benefit of a third party.
- 3 An "interest" is a commitment, obligation, duty or goal associated with a particular social role or practice.^[1] By definition, a "conflict of interest" occurs if, within a particular decision-making context, an individual is subject to two coexisting interests that are in direct conflict with each other. Such a matter is of importance because under such circumstances the decision-making process can be disrupted or compromised in a manner that affects the integrity or the reliability of the outcomes.
- 4 Typically, a conflict of interest arises when an individual finds himself or herself occupying two social roles simultaneously which generate opposing benefits or loyalties. The interests involved can be pecuniary or non-pecuniary. The existence of such conflicts is an objective fact, not a state of mind, and does not in itself indicate any lapse or moral error. However, especially where a decision is being taken in a fiduciary context, it is important that the contending interests be clearly identified and the process for separating them is rigorously established. Typically, this will involve the conflicted individual either giving up one of the conflicting roles or else recusing himself or herself from the particular decision-making process that is in question.
- 5 The presence of a conflict of interest is independent of the occurrence of inappropriateness. Therefore, a conflict of interest can be discovered and voluntarily defused before any corruption occurs. A conflict of interest exists if the circumstances are reasonably believed (on the basis of past experience and objective evidence) to create a risk that a decision *may* be unduly influenced by other, secondary interests, and not on whether a particular individual *is actually* influenced by a secondary interest.
- 6 A widely used definition is: "A conflict of interest is a set of circumstances that creates a risk that professional judgement or actions regarding a primary interest will be unduly influenced by a secondary interest."^[2] *Primary interest* refers to the principal goals of the profession or activity, such as the protection of clients, the health of patients, the integrity of research, and the duties of public officer. *Secondary interest* includes personal benefit and is not limited to only financial gain but also such motives as the desire for professional advancement, or the wish to do favours for family and friends. These secondary interests are not treated as wrong in and of themselves, but become objectionable when they are believed to have greater

weight than the primary interests. Conflict of interest rules in the public sphere mainly focus on financial relationships since they are relatively more objective, fungible, and quantifiable, and usually involve the political, legal, and medical fields.

7 A conflict of interest is a set of conditions in which professional judgment concerning a primary interest (such as a patient's welfare or the validity of research) tends to be unduly influenced by a secondary interest (such as financial gain). Conflict-of-interest rules [...] regulate the disclosure and avoidance of these conditions.

8 — *Dennis F. Thompson, The New England Journal of Medicine, 1993*^[3]

Related to the practice of law

Conflict of interests have been described as the most pervasive issue facing modern lawyers.^[4] Legal conflicts rules are at their core corollaries to a lawyer's two basic fiduciary duties: (1) the duty of loyalty and (2) the duty to preserve client confidences.^[5] The lawyer's duty of loyalty is fundamental to the attorney-client relationship and has developed from the biblical maxim that no person can serve more than one master.^[6] Just as fundamental is the lawyer's duty to maintain client confidences, which protects clients' legitimate expectations that they can make full disclosure of all facts to their attorneys without fear of exposure.^[7]

The basic formulation of the conflicts of interest rule is that a conflict exists "if there is a substantial risk that the lawyer's representation of the client would be materially and adversely affected by the lawyer's own interests or by the lawyers' duties to another current client, a former client, or a third person."^[8] The duty of loyalty requires an attorney not to act directly adverse to an existing client, even on an unrelated matter where the lawyer has no client confidences.^[9] Such a loyalty conflict has been labeled a *concurrent* conflict of interest.^[10] The duty of confidentiality is protected in rules prohibiting so-called *successive* conflicts of interest, when a lawyer proposes to act adversely to the interests of a former client.^[11] A lawyer who has formerly represented a client in a matter is precluded from representing another person in the same or a substantially related matter that is materially adverse to the former client.^[11] These two basic formulations – that a lawyer may not act directly adverse to a current client or adverse to a former client on a substantially related matter – form the cornerstone of modern legal conflicts of interest rules.¹

Concurrent conflicts of interest

Direct adversity to current client

An attorney owes the client undivided loyalty.^[13] The courts have described this principle as "integral to the nature of an attorney's duty."^[14] Without undivided loyalty, irreparable damage may be done "to the existing client's sense of trust and security – features essential to the effective functioning of the fiduciary relationship..."^[15] A key feature of the duty of loyalty is that an attorney may not act directly adverse to a current client or represent a litigation adversary of the client in an unrelated matter.^[16] The damage done is to the client's confidence that the lawyer is serving his or her interests faithfully.^[17] The most obvious example of a lawyer acting directly adverse to a client is when the lawyer sues the client.^[18] At the other end of the spectrum

is when a lawyer represents business competitors of the client who are not adverse to it in a lawsuit or negotiation. Representing business competitors of a client in unrelated matters does not constitute direct adversity nor give rise to a loyalty conflict.

An attorney's representation of one client will often have indirect effects on other existing clients. For example, simultaneously representing business competitors on unrelated matters may indirectly impair the interests of each. It will be rare indeed when an attorney's representation of a client will not have numerous indirect adverse effects on others. Obtaining a benefit for a client will often mean disadvantaging another person or entity, and indirect consequences may follow to all who may be dependents or owners of the attorney's opponents. The attorney's duty of loyalty, however, extends only to adverse consequences on existing clients which are 'direct.'...Of the numerous and varied consequences which a representation of one client may have on other clients, well-established legal authority interpreting the duty of loyalty limits the scope of ethical inquiry to whether the other affected clients are parties to the case or transaction in which the attorney is acting. --CALIFORNIA STATE BAR ETHICS OPINION 1989-113.

Direct adversity may arise in litigation when an attorney sues a client or defends an adversary in an action his or her client has brought.^[20] It may also arise in the context of business negotiations, when a lawyer negotiates on behalf of an adversary against a current client, even if the matter is unrelated to any matter the lawyer is handling for the client.^[21] However, merely advocating opposite sides of the same legal issue does not give rise to direct adversity.^[22] Even if a lawyer's advocacy in an unrelated matter may make unfavorable law for another client, such effects are only indirect and not subject to the conflicts rules.^[23] There is no conflict in advocating positions that may turn out to be unfavorable to another client so long as the lawyer is not directly litigating or negotiating against that client.

Identity of the client - corporations

One of the most frequently arising questions in corporate practice is whether parent corporations and their subsidiaries are to be treated as the same or different entities for conflicts purposes.^[24] The first authority to rule on this question was the California State Bar Ethics Committee, which issued a formal opinion ruling that parent corporations and their subsidiaries are to be considered distinct entities for conflicts purposes.^[25] The California committee considered a situation where an attorney undertook a representation directly adverse to the wholly owned subsidiary of a client, when the lawyer did not represent the subsidiary.^[25] Relying on the entity as client framework in Model Rule 1.13,^[26] the California committee opined that there was no conflict as long as the parent and subsidiary did not have a "sufficient unity of interests."^[24] The committee announced the following standard for evaluating the separateness of parent and subsidiary:

In determining whether there is a sufficient unity of interests to require an attorney to disregard separate corporate entities for conflict purposes, the attorney should evaluate the separateness of the entities involved, whether corporate formalities are observed, the extent to which each entity has distinct and independent managements and board of directors, and whether, for legal

purposes, one entity could be considered the alter ego of the other. -**CALIFORNIA STATE BAR ETHICS OPINION 1989-113.**

As one commentator has noted, "For a state ethics opinion, California Opinion 1989-113 has been unusually influential, both with courts there, with ethics committees elsewhere, and through the latter set of ethics committee opinions, with... recent decisions in other jurisdictions."^[27] The California opinion has been followed by ethics committees in such jurisdictions as New York, Illinois and the District of Columbia, and served as the basis of ABA Formal Ethics Opinion 95-390.^[28] The law in most jurisdictions is that parent corporations and their subsidiaries are treated as distinct entities, except in limited circumstances noted by the California ethics committee where they have a unity of interests.^[29]

The Second Circuit has adopted a variation of the California standard. In *GSI Commerce Solutions, Inc. v. BabyCenter LLC*,^[30] the court ruled that parent corporations and their subsidiaries should be treated as the same entity for conflicts purposes when both companies rely "on the same in-house legal department to handle their legal affairs."^[31] However, the court ruled that the lawyer and client can contract around this default standard.^[32] The court quoted with approval the opinion of the City of New York Committee on Professional and Judicial Ethics, which stated, "corporate family conflicts may be averted by ... an engagement letter ... that delineates which affiliates, if any, of a corporate client the law firm represents..."

Material limitation conflicts^[edit]

A concurrent conflict will also exist when "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer."^[34] Comment 8 to Model Rule 1.7 states, by way of example, that an attorney representing multiple persons forming a joint venture may be materially limited in recommending the courses of action that any jointly represented client may take because of the lawyer's duty to the other participants in the joint venture.^[35]

The Supreme Court of Minnesota found a material limitation conflict in *In re Petition for Disciplinary Action Against Christopher Thomas Kalla*.^[36] In *Kalla*, an attorney was disciplined for representing a borrower bringing suit against her lender for charging a usurious interest rate while simultaneously representing the mortgage broker who arranged the loan as a third party defendant in the same lawsuit. Although neither client had brought an action against the other, the court found a material limitation conflict: "Advocating for Client A would potentially harm Client B, who was potentially liable for contribution. Kalla's ability to fully advocate for both was materially limited by Kalla's dual representation."^[37]

Consent to concurrent conflicts of interest^[edit]

Consent to current conflicts^[edit]

A concurrent conflict of interest may be resolved if four conditions are met. They are:

1. the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
2. the representation is not prohibited by law;
3. the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
4. each affected client gives informed consent, confirmed in writing.^[38]

Informed consent requires that each affected client be fully advised about the material ways that the representation could adversely affect that client.^[39] In joint representations, the information provided should include the interests of the lawyer and other affected client, the courses of action that could be foreclosed due to the joint representation, the potential danger that the client's confidential information might be disclosed, and the potential consequences if the lawyer had to withdraw at a later stage in the proceedings.^[40] Merely telling the client that there are conflicts, without further explanation, is not adequate disclosure.^[41] The lawyer must fully disclose the potential impairment to the lawyer's loyalty and explain how another unconflicted attorney might better serve the client's interests.^[42]

Prospective consent to future conflicts^[edit]

It is not unusual in the current legal environment of large multinational and global law firms for the firms to seek advance or prospective waivers of future conflicts from their clients.^[43] A law firm is particularly likely to seek a prospective waiver when a large corporation seeks the specialized knowledge of the firm in a small matter, without a high likelihood of repeat business.^[43] As the ABA stated in its Ethics Opinion 93-372:

when corporate clients with multiple operating divisions hire tens if not hundreds of law firms, the idea that, for example, a corporation in Miami retaining the Florida office of a national law firm to negotiate a lease should preclude that firm's New York office from taking an adverse position in a totally unrelated commercial dispute against another division of the same corporation strikes some as placing unreasonable limitations on the opportunities of both clients and lawyers. -ABA Formal Opinion 93-372 (1993).

Prospective waivers are most likely to be upheld by the courts when they are given by sophisticated corporate clients represented by independent counsel in the negotiation of the waiver.^[44] However, in *Sheppard, Mullin, Richter & Hampton, LLP v. J-M Manufacturing Co.*,^[45] the California Supreme court held that a prospective waiver that did not make specific disclosure of an actual current conflict was not effective to waive that conflict.^[46] As the court said,

By asking J-M to waive current conflicts as well as future ones, Sheppard Mullin did put J-M on notice that a current conflict might exist. But by failing to disclose to J-M the fact that a current conflict actually existed, the law firm failed to disclose to its client all the 'relevant circumstances' within its knowledge relating to its representation of J-M. 6 Cal. 5th 59 (2018) at p. 84.

The *Sheppard Mullin* case does not invalidate prospective waivers in California.^[47] It only holds that waivers of current and actual conflicts must specifically disclose those conflicts, an unremarkable conclusion.^[48]

The substantial relationship test^[edit]

Conflicts of interest rules involving former clients are primarily designed to enforce the attorney's duty to preserve a client's confidential information.^[12] Model Rule 1.9(a) sets forth this doctrine in a rule that has come to be known as the substantial relationship test. The rule states:

A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing. -MODEL RULES OF PROF'L CONDUCT r. 1.9(a).

Without the substantial relationship test, a client attempting to prove that its former lawyer possesses its confidential information might have to disclose publicly the very confidential information it is trying to protect.^[55] The substantial relationship test was designed to protect against such disclosures.^[55] Under this test, the attorney's possession of the former client's confidential information is presumed if "confidential information material to the current dispute would normally have been imparted to the attorney by virtue of the nature of the former representation."^[56] The substantial relationship test reconstructs whether confidential information was likely to be imparted by the former client to the lawyer by analyzing "the similarities between the two factual situations, the legal questions posed, and the nature and extent of the attorney's involvement with the cases."^[57]

Imputation of conflicts^[edit]

The conflicts of an individual lawyer are imputed to all attorneys who "are associated with that lawyer in rendering legal services to others through a law partnership, professional corporation, sole proprietorship, or similar association."^[58] This imputation of conflicts can lead to difficulties when attorneys from one law firm leave and join another firm. The issue then arises whether the conflicts of the itinerant lawyer's former firm are imputed to his or her new firm.

In *Kirk v. First American Title Co.*,^[59] the court ruled that an itinerant lawyer's conflicts are not imputed to his or her new law firm if that firm timely sets up an effective ethics screen preventing the lawyers from imparting any confidential information to the lawyers in the new firm.^[60] An effective ethics screen rebuts the presumption that the itinerant lawyers shared confidential information with the lawyers in the new firm.^[61] The components of an effective ethics screen, as described by the court in *Kirk*, are:

1. physical, geographic, and departmental separation of attorneys;
2. prohibitions against and sanctions for discussing confidential matters;
3. established rules and procedures preventing access to confidential information and files;
4. procedures preventing a disqualified attorney from sharing in the profits from the representation;

5. continuing education in professional responsibility.^[62]

Judicial disqualification, also referred to as *recusal*, refers to the act of abstaining from participation in an official action such as a court case/legal proceeding due to a conflict of interest of the presiding court official or administrative officer.^[63] Applicable statutes or canons of ethics may provide standards for recusal in a given proceeding or matter. Providing that the judge or presiding officer must be free from disabling conflicts of interest makes the fairness of the proceedings less likely to be questioned.^[64]

In the practice of law, the duty of loyalty owed to a client prohibits an attorney (or a law firm) from representing any other party with interests adverse to those of a current client. The few exceptions to this rule require informed written consent from all affected clients, *i.e.*, an "ethical wall". In some circumstances, a conflict of interest can never be waived by a client. In perhaps the most common example encountered by the general public, the same firm should not represent both parties in a divorce or child custody matter. Found conflict can lead to denial or disgorgement of legal fees, or in some cases (such as the failure to make mandatory disclosure), criminal proceedings. In 1998, a Milbank, Tweed, Hadley & McCloy partner was found guilty of failing to disclose a conflict of interest, disbarred, and sentenced to 15 months of imprisonment.^{[65][66][67]} In the United States, a law firm usually cannot represent a client if the client's interests conflict with those of another client, even if the two clients are represented by separate lawyers within the firm, unless (in some jurisdictions) the lawyer is segregated from the rest of the firm for the duration of the conflict. Law firms often employ software in conjunction with their case management and accounting systems in order to meet their duties to monitor their conflict of interest exposure and to assist in obtaining waivers.

1.10 GIFT VS BRIBERY

What are gifts and bribes?

Defining gifts and bribes may seem like a simple-minded activity, but, try posing the question another way, and you will see why this is an important issue in government ethics: What is the difference between a gift and a bribe? A gift is something of value given without the expectation of return; a bribe is the same thing given in the hope of influence or benefit.

Because it is often impossible to determine the expectation of the giver, all federal, state, and local officials, both elected and appointed, are governed by rules restricting gifts. In some cases, gifts over a certain amount are disallowed; in others, they must simply be reported. These rules can vary significantly from locality to locality, indicating disparities in each legislature's understanding of when a gift becomes a bribe.

Gifts and bribes can be actual items, or they can be tickets to a sporting event, travel, rounds of golf, or restaurant meals.

In this context, it is well for government officials to remember the old saying, "There's no such thing as a free lunch," or even a free pencil. While many scoff at the idea that a pencil or notepad

from a developer may influence political decision making, one question needs to be answered: Why does the developer go to the trouble and expense of making these items?

To answer, we can look at analogous experience from another field. E. Haavi Morreim has studied the influence of drug company marketing on physicians' prescribing habits. Her observation: When you ask doctors whether this kind of drug marketing is effective, the answer is always the same: "It doesn't influence me at all. They're not going to buy my soul with a laser pointer." The truth is...this kind of advertising is crucial to sales. A doctor is not going to prescribe something he or she has never heard of, and it's the drug representative's job to get the products' names in front of the physicians."

Similarly, a member of the zoning commission who has been keeping a notepad from XYZ Builders next to his phone will remember the company when XYZ brings a matter before the commission. While no one is suggesting legislation that would prevent doctors or government officials from accepting inexpensive doodads, ethical politicians will recognize that any gift from someone with business before him or her is intended to exert an influence.

What do gifts and bribes have to do with ethics?

Political decisions are supposed to be made on the merits of the case, not based on whether or not the decision maker has received a lovely case of wine from one of the parties. This is a simple matter of fairness. When decision makers take gifts, even if their votes are not influenced, they give the appearance of being on the take, which undermines public confidence in government.

What ethical dilemmas do gifts and bribes present?

People do not go into government work to make a lot of money. Especially at the local level, elected officials may receive only token payment for the number of hours they put into the job. In this context, it is tempting to say that tickets to the local performing arts center or sporting arena are well-deserved perks of office. Some even argue that attending such events is part of the job and crucial to understanding the experience of citizens who use these venues.

On the other side, such gifts may well influence officials when they need to determine whether the performing arts center should expand or whether the arena can add retail outlets that local businesses oppose. Also, such gifts can create a slippery slope, with officials coming to expect VIP treatment and making local businesses feel coerced into offering it so that they can receive a fair hearing.

By the same token, it is incumbent upon businesses to comply with government regulations on gift giving. While it may be common in the private sector to acknowledge important customers with extravagant holiday gifts, this practice is disallowed in the public sphere; the gravel company that tries to reward the mayor of a city that has made a big purchase with 10 pounds of expensive chocolate simply puts the mayor in the awkward position of returning the gift.

Resources on Gifts and Bribes

- [NoSuchThingasaFreeTicket](#)
- [Political Perk or Part of the Job?](#)
- [Setting the Stage for Problems](#)
- [Putting Away the Gifts](#)

1.11 ENVIRONMENTAL BREACHES

They include bribery, sexual harassment, discrimination, unsafe working environment, deceptive publicity, unfair manipulation, and propaganda and environmental breaches.

Businesses should take care of the environment where they are located in a dignified way to ensure they promote natural resources.

1.12 NEGLIGENCE

The definition of professional negligence is when a professional fails to perform their responsibilities to the required standard or breaches a duty of care. This poor conduct subsequently results in a financial loss, physical damage or injury of their client or customer.

What is professional negligence?

A claim of professional negligence can be made against anyone considered to have expertise in the services they provide; for example, a technology or management consultant, surveyor, etc. For the claim to be successful there must be evidence that the service provided fell below the standards of their profession, resulting in negative consequences.

Examples of professional negligence

If, for example, you are a personal trainer and you fail to your client ask about any previous injuries and this then results in them injuring themselves during your session, you could be liable. As a professional trainer, you would be seen to have fallen short on your duty of care to that individual, a professional negligence claim could then be brought against you.

Some other examples of professional negligence are poor business strategy recommendations, failure to advise about tax relief available, failing to identify serious structural problems with a property or a breach of confidentiality.

What to do if a negligence claim is made against you?

Whether found to be in the wrong or not, after a professional negligence claim is made against you, you or your business could still be liable for legal fees or even the cost of closing your

business while the court proceedings take place. Having the correct insurance can help negate any loss to earnings and help to get your business back on its feet after a claim.

Professional indemnity insurance can help to cover the cost of compensation claims, or legal fees if a claim of professional negligence is made against your business.

For professionals in the health, beauty and wellness industry, the consequences of negligence will be different to those experienced by, for instance, a business consultant. Our treatment and professional liability insurance is specially designed to cover a range of business activities, including complementary and beauty therapies. This includes negligence. So, should you be accused of failing in your duty of care to your client during a treatment, you would be covered.

1.13 DEFICIENCIES IN STATE- OF – THE – ART

At present, the state-of-the-art automatic software vulnerability mining technologies can be divided into four main types: unexpected behavior check, feedback-driven genetic algorithms, grammar or rule-based generate, and symbolic execute.

1.14 VIGIL MECHANISM AND 1.15 WHISTLE BLOWING

Whistleblowing is when an individual reports wrongdoing in an organisation, for example financial misconduct or discrimination. This person is often an employee but can also be a third-party such as a supplier or customer.

Internal whistleblowing is when someone makes a report within an organisation. Often companies implement whistleblowing channels for this purpose so that employees and other stakeholders can speak up if they become aware of misconduct. Employees can also report to their line manager.

External whistleblowing is when a person blows the whistle publicly, either to the media, police or via social media channels. People often opt to blow the whistle publicly if they have little faith in their organisation's investigation or reporting procedure, have tried speaking up internally with no result or if there is no whistleblowing system in place.

Whistleblowing complaints focus on conduct prohibited by a specific law such as a criminal offence, discrimination or evidence of a cover up. Speak up policies may however cover a broader range of issues related to compliance and ethics.

Whistleblowing is different to raising a workplace grievance. A grievance is a matter of personal interest and does not impact on the wider public, whereas a whistleblowing report relates to more serious and widespread concerns as outlined above.

1.16 PROFESSIONAL DISCLOSURES

The purpose of a professional disclosure statement is to inform clients about your professional back ground and the limitations of your professional relationship. It is some times to as a document of informed consent.

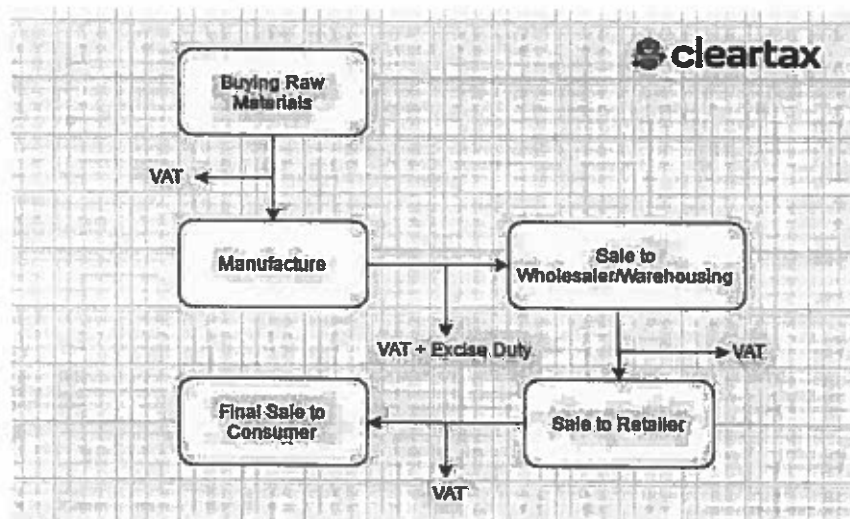
1.17 INTRODUCTION TO G.S.T

G S T is known as the Goods and Services Tax. It is an indirect tax which has replaced many indirect taxes in india such as the excise duty,VAT,tax,etc.The Goods and Service Tax Act was passed in the Parliament on 29th March 2017 and came into effect on 1st July 2017.

In other words,Goods and Service Tax (GST) is levied on the supply of goods and services, Goods and Services Tax Law in india is a Comprehensive,multi-stage,destination-based tax that is levied on every value addition. GST is a single domestic indirect tax law for the entire country.

Before the Goods and Services Tax could be introduced,the structure of indirect tax levy

In india was as follows:



1.18 VARIOUS ROLES OF VARIOUS STAKE HOLDERS

A stake holder is a person who has an interest in the company,suppliers,vendors or any partner. They all have an interest in the organisation.

- 1 Customers. Stakes : Product/Service quality and value
- 2 Employees Stakes : Employment income and safety
- 3 Investors Stakes : Financial returns
- 4 Supplies and Vendors Stake : Revenues and safety
- 5 Communities Stake : Health, Safety, economic development
- 6 Governments Stake : Taxes and GDP