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UNIVERSITY OF PETROLEUM AND ENERGY STUDIES

End Semester Examination, April 2018

Program: B.TECH.(CSE), LL.B. (Hons.) Cyber Laws, B. TECH.(ET), LL.B. (Hons.) IPR
Semester –
XIIth

Subject (Course): Professional Ethics, Accountancy for lawyers & Bar Bench Relation

Course Code : LLBL 531
No. of page/s: 9

Max. Marks : 100
Duration : 3 Hrs

SECTION A (10 MARKS)

Each question carries a value of 2 marks. Mark True/False for the following statements:

1. Bar Council of India Rules govern code of conduct of advocates.
2. In the USA, during Industrial Revolution era, women were active participants in the legal profession.
3. OJ Simpson was accused of killing only Nicole Simpson.
4. *In Re Arundhati Roy* pertains to civil contempt.
5. *Adam's Rib* can be critiqued on the basis of the 14th Amendment to the United States Constitution.

SECTION B (20 MARKS)

Each question carries a value of 10 marks.

6. Discuss the legal history of India.
7. Discuss the trial of OJ Simpson in light of racial and gender discrimination and superstardom.

SECTION C (20 MARKS)

Each question carries a value of 10 marks.

8. In the context of racial inequality, discuss 'To Kill a Mockingbird'. Compare the racial inequality in the USA with the marginalisation of women, backward castes, disabled, transgenders, religious minorities that is present in India. What issues would you face if you were to take a case of the aforementioned disadvantaged sections of population?
9. Explain the attorney-client confidentiality in US law.

SECTION D (50 MARKS)

Each question carries a value of 25 marks.

10. Following the Supreme Court's ruling in *Suresh Kumar Koushal vs. Naz Foundation*, an openly gay journalist named Mr. A writes an article in *The Indian Express* vehemently criticising the judgment and the position and attitude of the Supreme Court towards homosexuals. Relevant portions of his article are:

“Supreme Court via its nonsensical judgment makes a mockery of the right to love. The Supreme Court of India only knows the right to hate the homosexual community. The ruling further marginalises the LGBT community.”

Suo moto contempt proceedings take place against Mr. A and *The Indian Express* in the Supreme Court. Neither Mr. A nor *The Indian Express* have apologised to the Supreme Court for their remarks. In the meantime, Naz Foundation files a review petition in the Supreme Court.

- a) List down the arguments for Mr. A and *The Indian Express*. (15 marks)
- b) What should be the judicial opinion of the Supreme Court? (10 marks)

Relevant legal provisions:

The Constitution Of India 1949

19. Protection of certain rights regarding freedom of speech etc

(1) All citizens shall have the right

- (a) to freedom of speech and expression

(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

Contempt of Court Act, 1971

2. Definitions. In this Act, unless the context otherwise requires,

(c) criminal contempt means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner

3. Innocent publication and distribution of matter not contempt.

(1) A person shall not be guilty of contempt of court on the ground that he has published (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceeding pending at that time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending.

(2) Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, the publication of any such matter as is mentioned in sub-section (1) in connection with any civil or criminal proceeding which is not pending at the time of publication shall not be deemed to constitute contempt of court.

(3) A person shall not be guilty of contempt of court on the ground that he has distributed a publication containing any such matter as is mentioned in sub-section (1), if at the time of distribution he had no reasonable grounds for believing that it contained or was likely to contain any such matter as aforesaid:

Provided that this sub-section shall not apply in respect of the distribution of:

- (i) any publication which is a book or paper printed or published otherwise than in conformity with the rules contained in section 3 of the Press and Registration of Books Act, 1867 (25 of 1867);**
- (ii) any publication which is a newspaper published otherwise than in conformity with the rules contained in Section 5 of the said Act**

4. Fair and accurate report of judicial proceeding not contempt.

Subject to the provisions contained in Section 7, a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding or any stage thereof.

5. Fair criticism of judicial act no contempt.

A person shall not be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided.

7. Publication of information relating to proceeding in chambers or in camera not contempt except in certain cases.

(1) Notwithstanding anything contained in this Act, a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding before any court sitting in chambers or in camera except in the following cases, that is to say,

- (a) where the publication is contrary to the provisions of any enactment for the time being in force;**
- (b) where the court, on grounds of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceeding or of information of the description which is published;**

(c) where the court sits in chambers or in camera for reason connected with public order or the security of the State, the publication of information relating to those proceedings;

(d) where the information relates to a secret process, discovery or invention which is an issue in the proceedings.

(2) Without prejudice to the provisions contained in sub-section (1), a person shall not be guilty of contempt of court for publishing the text or a fair and accurate summary of the whole, or any part, of an order made by a court sitting in chambers or in camera, unless the court has expressly prohibited the publication thereof grounds of public policy, or for reasons connected with public order or the security of the State, or on the ground that it contains information relating to a secret process, discovery or invention, or in exercise of any power vested in it.

12. Punishment for contempt of court.

(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

Explanation. An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.

Explanation. For the purpose of sub-sections (4) and (5):

(a) ‘company’ means any body corporate and includes a firm or other association of individuals; and

(b) ‘director’, in relation to a firm, means a partner in the firm.

13. Contempts not punishable in certain cases.

Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice.

14. Procedure where contempt is in the face of the Supreme Court or a High Court.

(1) When it is alleged, or appears to the Supreme Court or the High Court upon it

own view, that a person has been guilty of contempt committed in its presence or hearing, the court may cause such person to be detained in custody, and, at any time before the rising of the court, on the same day, or as early as possible thereafter, shall:

(a) cause him to be informed in writing of the contempt with which he is charged;

(b) afford him an opportunity to make his defence to the charge;

(c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and

(d) make such order for the punishment or discharged of such person as may be just.

(2) Notwithstanding anything contained in sub-section (1), where a person charged with contempt under that sub-section applies, whether orally or in writing, to have the charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.

(3) Notwithstanding anything contained in any other law, in any trial of a person charged with contempt under sub-section (1) which is held, in pursuance of a direction given under sub-section (2), by a Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed to appear as a witness and the statement placed before the Chief Justice under sub-section (2) shall be treated as evidence in the case.

(4) Pending the determination of the charge, the court may direct that a person charged with contempt under this section shall be detained in such custody as it may specify:

Provided further that the court may, if it thinks fit, instead of taking bail from such person, discharge him on his executing a bond without sureties for his attendance as aforesaid.

11. Critically analyse *Kalikumar Pal v. Rajkumar Pal* 1931 (58) Cal 1379. (25 marks)

Relevant legal provisions:

Section 126 in The Indian Evidence Act, 1872

126. Professional communications.—No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure—

(1) Any such communication made in furtherance of any illegal purpose;

(2) Any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment. It is immaterial whether the attention of such barrister, pleader, attorney or vakil was or was not directed to such fact by or on behalf of his client.

Explanation.—The obligation stated in this section continues after the employment has ceased.

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Semester	:	XIth					
Name of the Subject (Course)	:	Professional Ethics, Accountancy for lawyers & Bar Bench Relation					
Course Code	:	LLBL 531					
Name of Question Paper Setter	:	Devyani Tewari					
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End Semester Examination, April 2018

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Course Code : LLBL 531
No. of page/s: 8

Max. Marks : 100
Duration : 3 Hrs

SECTION A (10 MARKS)

Each question carries a value of 2 marks. Mark True/False for the following statements:

1. Professional misconduct is defined in the Advocates Act.
2. American legal history reflects anti-immigrant sentiments.
3. OJ Simpson was held guilty by the jury in the criminal trial.
4. *Adam's Rib* can be critiqued on the basis of gender discrimination.
5. *Clark v. United States*, 289 U.S. 1, 15 (1933) demonstrates the crime-fraud exception to attorney-client confidentiality.

SECTION B (20 MARKS)

Each question carries a value of 10 marks.

6. Discuss the legal history of the United States.
7. Critique 'Adam's Rib'.

SECTION C (20 MARKS)

Each question carries a value of 10 marks.

8. How does superstardom, race and law reflect in the trial of O.J. Simpson? Explain.
9. What are the repercussions faced by Atticus Finch in the movie 'To Kill a Mockingbird'? In the context of disadvantaged sections of society, what are the consequences you are likely to face when defending them in India?

SECTION D (50 MARKS)

Each question carries a value of 25 marks.

10. Critique *In Re Arundhati Roy*.

Relevant legal provisions:

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19. Protection of certain rights regarding freedom of speech etc

(1) All citizens shall have the right

(a) to freedom of speech and expression

(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

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(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

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(2) Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, the publication of any such matter as is mentioned in sub-section (1) in connection with any civil or criminal proceeding which is not pending at the time of publication shall not be deemed to constitute contempt of court.

(3) A person shall not be guilty of contempt of court on the ground that he has distributed a publication containing any such matter as is mentioned in sub-section (1), if at the time of distribution he had no reasonable grounds for believing that it contained or was likely to contain any such matter as aforesaid:

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A person shall not be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided.

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(1) Notwithstanding anything contained in this Act, a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding before any court sitting in chambers or in camera except in the following cases, that is to say,

(a) where the publication is contrary to the provisions of any enactment for the time being in force;

(b) where the court, on grounds of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceeding or of information of the description which is published;

(c) where the court sits in chambers or in camera for reason connected with public order or the security of the State, the publication of information relating to those proceedings;

(d) where the information relates to a secret process, discovery or invention which is an issue in the proceedings.

(2) Without prejudice to the provisions contained in sub-section (1), a person shall not be guilty of contempt of court for publishing the text or a fair and accurate summary of the whole, or any part, of an order made by a court sitting in chambers or in camera, unless the court has expressly prohibited the publication thereof grounds of public policy, or for reasons connected with public order or the security of the State, or on the ground that it contains information relating to a secret process, discovery or invention, or in exercise of any power vested in it.

12. Punishment for contempt of court.

(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to

six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

Explanation. An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.

Explanation. For the purpose of sub-sections (4) and (5):

(a) ‘company’ means any body corporate and includes a firm or other association of

individuals; and

(b) ‘director’, in relation to a firm, means a partner in the firm.

13. Contempts not punishable in certain cases.

Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice.

14. Procedure where contempt is in the face of the Supreme Court or a High Court.

(1) When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the court may cause such person to be detained in custody, and, at any time before the rising of the court, on the same day, or as early as possible thereafter, shall:

(a) cause him to be informed in writing of the contempt with which he is charged;

(b) afford him an opportunity to make his defence to the charge;

(c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and

(d) make such order for the punishment or discharge of such person as may be just.

(2) Notwithstanding anything contained in sub-section (1), where a person charged with contempt under that sub-section applies, whether orally or in writing, to have the charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter

to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.

(3) Notwithstanding anything contained in any other law, in any trial of a person charged with contempt under sub-section (1) which is held, in pursuance of a direction given under sub-section (2), by a Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed to appear as a witness and the statement placed before the Chief Justice under sub-section (2) shall be treated as evidence in the case.

(4) Pending the determination of the charge, the court may direct that a person charged with contempt under this section shall be detained in such custody as it may specify:

Provided further that the court may, if it thinks fit, instead of taking bail from such person, discharge him on his executing a bond without sureties for his attendance as aforesaid.

11. Critically analyse *Adi Pherozshah Gandhi vs H. M. Seervai, Advocate-General AIR 1971 SC 385.*

Relevant legal provisions:

The Advocates Act, 1961

35. Punishment of advocates for misconduct.—

(1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

(2) The disciplinary committee of a State Bar Council shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and to the Advocate-General of the State.

(3) The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders, namely:—

- (a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;**
- (b) reprimand the advocate;**
- (c) suspend the advocate from practice for such period as it may deem fit;**
- (d) remove the name of the advocate from the State roll of advocates.**
- (4) Where an advocate is suspended from practice under clause (c) of sub-section (3), he shall, during the period of suspension, be debarred from practising in any court or before any authority or person in India.**
- (5) Where any notice is issued to the Advocate-General under sub-section (2), the Advocate-General may appear before the disciplinary committee of the State Bar Council either in person or through any advocate appearing on his behalf.**
Explanation.—In this section, the expressions “Advocate-General” and Advocate-General of the State” shall, in relation to the Union territory of Delhi, mean the Additional Solicitor General of India.

37. Appeal to the Bar Council of India.—

- (1) Any person aggrieved by an order of the disciplinary committee of a State Bar Council made under section 35 may, within sixty days of the date of the communication of the order to him, prefer an appeal to the Bar Council of India.**
- (2) Every such appeal shall be heard by the disciplinary committee of the Bar Council of India which may pass such order thereon as it deems fit.**

38. Appeal to the Supreme Court.—Any person aggrieved by an order made by the disciplinary committee of the Bar Council of India under section 36 or section 37, may within sixty days of the date on which the order is communicated to him, prefer an appeal to the Supreme Court and the Supreme Court may pass such order thereon as it deems fit.