



Bar Council of India
19th Qualifying Examination for Indian
Nationals Holding Foreign Law Degrees

Paper-6-Indian Legal Profession and Code of Ethics
(23.12.2023)

PART - A

Answer any five of the following.

(5 x 5 = 25)

1. Can the Bar Council of India, after the transfer of a disciplinary proceeding under Section 36B(1) of the Advocates Act, 1961, from the State Bar Council, choose to send it back to the State Bar Council for disposal rather than conducting its own inquiry and adjudication? Explain and analyze, supported by relevant judgments of the Supreme Court of India, the provisions of the Advocates Act, 1961, and the Rules of the Bar Council of India established under the Act.
2. (a) In case, the State Bar Council after consideration of a complaint filed by a Complainant against an Advocate, prima-facie does not find merit in the complaint and dismisses the same, under which provision does the remedy lie to the complainant and to which authority.

(b) If it is found that an Advocate is enrolled with the State Bar Council by misrepresentation, fraud, concealment of an important fact etc. under what provisions of the Advocates Act, 1961 and by which authority can his name be removed from the rolls of the State Bar Council.
3. Consider whether the following actions amount to professional or other misconduct:
 - a. An advocate assaults his opposing Advocate with a knife and gun within the court premises during lunchtime.
 - b. An Advocate fabricates a false affidavit concerning the conduct of a marriage that never took place.
 - c. An Advocate is involved in managing a canteen center within the court compound.
 - d. An Advocate distributes pamphlets containing only his mobile number, omitting his name, and outlines various legal areas he practices in.
 - e. A client pays Rs. 5000 to an Advocate for representation regarding fraud in the purchase of a mobile phone. When the Advocate decides there is no case to pursue and informs the client, the client seeks a refund, which the Advocate does not provide.



Bar Council of India

19th Qualifying Examination for Indian Nationals Holding Foreign Law Degrees

4. Ramesh had engaged Advocate B to represent him in a matrimonial matter pending before the family court. Ramesh was not satisfied with B's performance and wanted to engage another Advocate. However, B refused to give Ramesh a no-objection certificate (NOC) as well as hand over case files/briefs, stating that the full agreed fees was not paid. Analyze the above situation with help of judicial decisions, and Bar Council of India Rules.
5. During the hearing of a case, some Advocates appearing before the court got agitated and annoyed as the court did not grant relief as per their desire. They abused the court, used intemperate language and levelled allegations. What action/s can be initiated/taken against them?
- (a) Whether they can be prosecuted by the Court under the Contempt of Court Act, or
- (b) Whether they can be prosecuted by the Court under the Advocates Act, 1961, or
- (c) Whether action can be taken under both the laws. i.e. the Contempt of Court Act and Advocates Act, 1961.

Explain the above statement with case law?

6. An Advocate was engaged by a client in a property dispute matter. After the matter was decided, the Advocate purchased the same disputed property from the client at a rate lower than the market rate. Then, the Advocate sold this property to a third party at a higher rate. The Advocate's stand is that he is no longer connected to the property as he has sold it to a third party, and hence is not guilty of any professional or other misconduct under Advocates Act and the Bar Council of India rules. Is the stand taken by the Advocate correct? Analyze and give your view on the same considering the principles of the Advocates Act and Bar Council of India Rules.

PART - B

Answer any three of the following.

(3 x 15 = 45)

7. Mr. and Mrs. Kumar, a couple married for 12 years with two children, aged 9 and 7, believe that their marriage has not been thriving for the past four years. Seeking a divorce, they have approached Advocate Kapil Sharma for legal assistance. The couple, still considering each other as friends, have agreed on a custody arrangement. Mr. Kumar will have custody of their 9-year-old son, while Mrs. Kumar will have custody of their daughter. Additionally, Mrs. Kumar has proposed Rs. 20,000 a month for child maintenance, a proposal to which Mr. Kumar has agreed without hesitation. Both parties wish to avoid engaging separate Advocates due to cost concerns.



Bar Council of India

19th Qualifying Examination for Indian Nationals Holding Foreign Law Degrees

Evaluate whether Advocate Kapil Sharma should accept the case and agree to represent both parties. Additionally, identify potential challenges that may arise in joint representation.

8. Explore the responsibilities of a lawyer in the following scenarios:
 - a. A client, A, confides in B, an Advocate, stating, "*I have committed forgery and I am seeking your legal representation for my defense.*"
 - b. A client, A, discloses to B, an Advocate, saying, "*I intend to acquire possession of property through the utilization of a forged deed, and I am seeking your legal assistance to pursue a lawsuit.*"
9.
 - (a) Are Advocates permitted to engage in advertising, and if so, what specific information can an Advocate publish on a website?
 - (b) Provide a critical examination of the limitations imposed on Advocates concerning alternative employments. Consider the case of Mr. Mohan, currently employed in a government position and pursuing a 3-year LL.B. Degree course in a college located 200 km away. Mr. Mohan has obtained due permission from his department to pursue an LL.B degree, with the condition, that it does not adversely affect his office responsibilities. He only applies for leaves during examination periods. Please elucidate whether Mr. Mohan has the right to be enrolled as an Advocate while in service or post-retirement.
10.
 - (a) Provide an explanation of the procedural requirements for establishing a new Center of Legal Education in accordance with the Rules of Legal Education. Highlight the role of the Bar Council of India and its Committee in overseeing and facilitating this process.
 - (b) Can students graduating from a college or university that lacks approval or recognition from the Bar Council of India be admitted for enrollment as Advocates?
 - (c) Illustrate the scenario where a prospective Center of Legal Education, following the procedures outlined in the Rules of Legal Education, has applied to the Bar Council of India. However, an inspection by the Bar Council of India has not yet taken place, and the institution has admitted students without the requisite approval of affiliation. Explore the implications for the students in terms of their ability to be enrolled as Advocates after obtaining their LL.B. Degree from such a college or university.



Bar Council of India

19th Qualifying Examination for Indian Nationals Holding Foreign Law Degrees

PART - C

Answer any one of the following.

(1 × 30 = 30)

11. Consideration before Enrolment as an Advocate, before entering the Legal profession, involves an evaluation of an individual's qualifications, character, ethical conduct, baseline level of competence, integrity etc fitness to practice law by the Enrolment Committee. The committee examines whether the applicant understands the boundaries of professional expression and refrains from engaging in conduct that will be unbecoming of the profession of Advocacy, once he joins such profession.

The Constitutional Bench of 5 Hon'ble judges of the Supreme Court in Bar Council of India vs Bonni Foi held that the objective of the legislature while giving wide powers to the Bar Council of India under section 49 of the Advocates Act, which gives it the power to prescribe rules read with clause (d) of sub-section (3) of Section 24, which gives it the power to prescribe norms for entitlement to be enrolled as an Advocate under the Rules of the Bar Council of India, leads the Court to the conclusion that these are adequate powers with the Bar Council of India under the said Act to provide for such norms and rules. [Section- 49 (1) (ag)(ah) (c)].

The State Bar Council has the power to make rules(Section 24 (1) stipulating conditions subject to which a person may be admitted as an Advocate on any such roll,(Section 28 (1) (d)), however no such rules made by any State Bar Council shall have effect unless they have been approved by the Bar Council of India as per the Advocates Act(Section 28(2) . The Bar Council of India is empowered to exercise general supervision and control over State Bar Councils as per the Advocates Act (Section 7 (1) (g) and has power to issue directions to State Bar Councils which will be given effect to even by overriding rules framed by State Bar Councils. (Section 48B(1) & (2).

As per the Bar Council of India vs AK Balaji judgment passed by Supreme Court of India, in 2018, individual lawyers, groups of individual lawyers, bar associations, Companies, law firms, even bpo companies who, if in pith and substance are doing practise of law, regardless of their nomenclature, as well as foreign lawyers, if they practice in India, they all fall under the regulatory regime of the Bar Council of India.

The following is the standards of professional conduct and etiquette expected of an Advocate.

"An Advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and normal for a person who is not a member of the Bar, or for a member of the Bar in his nonprofessional capacity may still be improper for an advocate. Any conduct that in any way renders an Advocate unfit for the exercise



Bar Council of India

19th Qualifying Examination for Indian Nationals Holding Foreign Law Degrees

of his profession, may be considered to amount to misconduct. The liberty of free expression is not to be confounded or confused with licence to make baseless or unfounded allegations and/or resorting to illegal and unlawful means for seeking to enforce one's stand. Malafidely and mischievously imputing and stating and/or publishing, false, incorrect, derogatory, and defamatory allegations against any individual or organisation with an aim to attempt to disgrace, defame and lower and harm the character, name, reputation, esteem, dignity, credibility, moral and intellectual character tantamounts to libel and slander, and misconduct, and further using of intemperate language, showing disrespect to court, opponents, clients, colleagues, regulatory authorities, and/or to high offices, is an conduct unbecoming of an Advocate. Maintaining a level of civility and respect in language, and following due procedure of law and due procedure established by law, contributes to a more constructive and cooperative environment, facilitates understanding, and upholds standards of professional conduct."

Note-The rules on professional conduct and etiquette of Bar Council of India, mentions contain canons of conduct and etiquette adopted as general guides, yet the specific mention thereof shall not be construed as a denial of the existence of others equally imperative though not specifically mentioned.

Examine the aforementioned in detail from the context of the standards anticipated from individuals aspiring to enroll in the esteemed field of Advocacy. Additionally, analyze the expected professional conduct and etiquette from all those who come under the regulatory mechanism of the Bar Council of India, which they must maintain and uphold to prevent instances of professional or other misconduct, as delineated in the Advocates Act, 1961.

12. (a) Outline the qualifications stipulated by the provisions of the Advocates Act, 1961 for an individual to attain the status of an Advocate. Furthermore, elucidate the disqualifications that may prevent a person from being enrolled, taking into account the provisions of the Advocates Act, Bar Council of India Rules, and established norms. (10 Marks)
- (b) Elaborate on the concept and procedure of complaints related to professional and other misconduct and define both and differentiate between both (15 Marks)
- (c) Clarify the eligibility criteria for appearing in the All India Bar Exam (AIBE). If an Advocate has not appeared and passed the AIBE, assess whether such an Advocate is entitled to practice in a court of law. (5 Marks)
