

LEGAL PROFESSION AND ETHICS

for Law 5th Students of Mekelle University

By: Awet Lijalem

(LLB,LLM, Judge at Supreme Court of Tigray,
Part-Time Lecturer of Law at Mekelle University,
School Of Law)

October 2017, Mekelle

I'm grateful for
having the
opportunity
of lecturing law at
Mekelle University

Introductory Matters

❖ Do we need Legal Ethics?
Isn't the law itself enough?

- ❖ To protect abuse: public duty vs. individual interest
- ❖ To put guidance for lawyers
- ❖ To preserve its reputation; if lawyers do not adhere to ethical principles people will lose confidence and resort to an other alternative

Introductory Matters . . .

Continued

*Benjamin J Odoki, Chief Justice of Uganda on
the benefit of Legal Ethics:*

Why do we need to learn Legal Ethics?

Can we teach a person to be good?

- ❖ Benefits of teaching legal ethics:
 - Awareness of the rules of the game
 - awareness of ethical issues
 - capacity to navigate ethical and professional challenges
 - Inspiring to be good professionals
 - Preparing law students for the existing and emerging legal professions

Introductory Matters . . . Continued

- *Chief Justice Odoki continues:*
- But mere understanding of legal ethics is not enough
- A student enrolled in a legal ethics course should engage with bigger questions such as:
 - “Who am I?”
 - “What do I believe in?”
 - “What is important to me?”
 - “What will I do to make this world and my nation a better place?”
 - “How will I be remembered?”

Introductory Matters . . . Continued

❖ **Nigel Duncan on the goals of legal ethics:**

- developing a contextual approach to the study of law: a mechanism for challenging a narrow black-letter approach;
 - developing good citizenship: [good citizen vs. good lawyer](#)
 - providing a vector for critical analysis as an intellectual development;
 - introducing a relevant focus for the study of moral and ethical principles; or
 - providing a focus for socio-legal analysis.
- ❖ According to ROBERT P. BURNS: responsible practice is the goal of learning and teaching legal ethics in law school.

Introductory Matters . . . Continued

- What do we learn in Legal Ethics? Rules, morality or philosophy?
 - Ethical rules and principles
 - Moral philosophy: to handle moral dilemmas
 - The legal profession
 - Responsibility of a lawyer in a society
- **Philosophy > Ethics > Applied ethics > Professional ethics > Legal ethics**
- A good lawyer: knowledge, skill and ethics
- Russell G. Pearce argues that
 - properly taught, ethics courses should provide the lens through which students view what it means to be a lawyer and discover how to find meaning in their work.

Table of Contents

- **Chapter One: Introduction to Legal Profession and Ethics**
- **Chapter Two: The Legal Profession**
- **Chapter Three: Judicial Conduct**
- **Chapter Four: Advocates' Ethics**
- **Chapter Five: Ethics of the Public Prosecutor**

Chapter One: Introduction to Legal Profession and Ethics

—

- **Introduction**
- **Objectives**
 - Historical Background
 - Ethics, Profession, Professional Ethics and Legal Ethics
 - Moral Issues and Moral Dilemmas
 - The Theory of Moral Obligation
 - Utilitarianism
 - Act Utilitarianism
 - Rule Utilitarianism
 - The Golden Rule
 - Categorical Imperative
 - Using Others as Mere Means
 - Treating Others as Ends in Themselves

Introduction

Objectives

2.1. Meaning and Nature of Legal Profession

2.2. Admission to the Legal Profession

a) Canada

b) South Africa

c) U.S

d) Ethiopia

2.3. Constitutional Right to Exercise Legal Profession

2.4. Dissatisfaction with Legal Profession

2.5. Bar Associations and their Role in Legal Profession

a) American Bar Association

b) Ethiopian Bar Association

2.6. Unauthorized Practice in Legal Profession

Chapter Three: Judicial Ethics

Introduction

Objectives

3.1. Ethical Duties of Judges in Judicial Activities

3.1.1. Independence

3.1.2. Accountability

3.1.3. Impartiality

3.1.4. Competence and Diligence

3.1.5. Equality

3.1.6. Civility among Judges

3.2. Ethical Requirements of Judges in Extra-Judicial Activities

3.3. Appointment, Withdrawal, Transfer, Promotion and Removal of Judges

3.3.1. Judicial Appointment

3.3.2. Judges' Tenure and Removal of Mechanisms

Chapter Three: Judicial Ethics . . . continued

3.3.3. Criteria for Appointment

3.3.4. Appointment of Judges in the United States

3.3.5. Appointment and Removal of Judges in India

3.3.6. Appointment, Withdrawal and Removal of Judges in Ethiopia

3.3.6.1. Federal Judicial Administration Council

3.3.6.2. Criteria for Judicial Appointment

3.3.6.3. Procedure of Appointments

3.3.6.4. Withdrawal and Removal of Judges

3.4. Factors that Influence Ethical Requirement of Judges

3.5. Liability (Responsibility) for Breach of Rules of Conduct

3.5.1. Disciplinary Agency

3.5.2. Disciplinary Measures

3.5.3. Procedures of Disciplinary Proceedings

Chapter Four: Advocates' Ethics

Objectives

- 4.1. The Profession, the Justice System, Court and the Country
- 4.2. Ethical Requirements of Advocates in Relation to their Clients
 - 4.2.1. Diligent and Competent Representation
 - 4.2.2. Duty of Confidentiality
 - 4.2.3. Contract of Advocacy
 - 4.2.4. Conflict of Interest
- 4.3. Ethical Requirements of Advocates in Relation to the Court
- 4.4. Non Professional Subsidiary Activities

Chapter Five: Ethics of the Public Prosecutor

Objectives

5.1. Eligibility

5.2. Legal Basis and Basic Ethical Principles for the Functions of Public Prosecutor

5.2.1. Independence, Impartiality and Immunity

5.2.2. Confidentiality

5.2.3. Competence and Diligence

5.2.4. Loyalty and Avoidance of Conflict of Interest

5.3. In Relation to the Accused, the Court and Other Institutions

5.4. Engaging in Activities Outside Official Duties

5.5. Other Ethical Considerations

5.6. Liability for Violation of Codes of Conduct for Prosecutors

5.6.1. Administrative (Disciplinary) Liabilities

5.6.2. Criminal Liabilities

5.6.3. Civil Liabilities

Chapter One: Introduction to Legal Profession and Ethics

Points of discussion of this chapter:

1.1. Historical Background

1.2. Important concepts:

- Ethics
- Profession
- Professional Ethics
- Legal Ethics

1.3. Moral Issues and Moral Dilemmas

1.4. The Theory of Moral Obligation

- Utilitarianism
- The Golden Rule
- Categorical Imperative

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.1. Historical Background

- **Ancient Greece and Rome**
 - Early Greeks : orators without fee
 - Can we say Greeks contributed to the development of legal profession?
 - Romans:
 - Advocates and *juris consults*
 - There was no regulation until Claudius legalized advocacy as a profession
 - By the 6th c a regular course of legal study was required for admission to advocacy

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.1. Historical Background . . . Continued

- **Middle Ages**

- In 1190-1230 some men began to practice law as lifelong profession in itself
- In 1230s **taking oath** for admission was introduced in Europe
 - Latin *professio* that comes in turn from the Greek verb *prophaino*, to declare publicly
- In England, Admission of lawyers has been regulated since the middle of the 13th C
- In 1739, attorneys formed a professional group called “Society of Gentleman Practicers in the Courts of Law and Equity”- Later developed in to Law Society
- The first written code of conduct for advocates in USA by ABA- 1906; for Judges in 1919.

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.1. Historical Background . . . Continued

France (John Leubsdorf, On the History of French Legal Ethics)

- Since the eighteenth century, France's local bars (there are now 180 of them) have admitted and disciplined *avocats*
- Avocats vs. magistrates (judges, prosecutors and investigating magistrates)
- Traditionally the *avocat was not considered the agent of his client*
- Following Roman precedent more than reality, an *avocats fee* was considered the gift of a grateful client
- *Through time, Avocats won the right to sue clients for fees and to enter fee contracts with them.*
- Advertisement was prohibited- The bar was supposed to be dedicated to the pursuit of justice and glory, not clients or money
- Traditionally every *avocat* was a sole practitioner.
- Paris bar's rule: an *avocatis obliged* to manifest "dignity, conscience, independence, probity and humanity, honor, uprightness, delicacy, moderation, courtesy, disinterestedness, confraternity and tact.'

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.1. Historical Background . . . Continued

- In Ethiopia
 - legal profession existed in the customary law of different ethnic groups, eg, *aba alenga*
 - It was only after 1934 E.C. that persons were required to have permission to represent others
 - It was unregulated until the promulgation of Regulation No. 57/1999
- Self-regulation vs. Co-regulation

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.2. Some Important Concepts

- 1.2.1. Ethics

What is Ethics?

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.2. Some Important Concepts . . . Continued

1.2.1. What is Ethics?

- The word ethics is derived from the Greek word [ethos](#) (character), and from the Latin word [mores](#) (customs). Together they combine to define how individuals choose to interact with one another.
- Oxford Dictionary (9th Ed) *moral principles that control or influence a person's behavior*
- The branch of knowledge that deals with moral principles
- Encyclopedia Britannica- ethics, also called moral philosophy, is the discipline concerned with what is morally good and bad, right and wrong.
- Catholic Encyclopedia: ethics may be defined as the [science](#) of the moral rectitude of [human acts](#) in accordance with the first principles of natural reason

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.2. Some Important Concepts . . . Continued

1.2.1. What is Ethics?. . . continued

- Ethics is defined as the practical science of morality of human conduct. **GOZON**
- Wow.com- *Ethics or moral philosophy is a branch of philosophy that involves systematizing, defining and recommending concepts of right and wrong conduct.*
- Rushworth Kidder- ethics have typically included such phrases as the science of the ideal human character or the science of moral duty
- Richard William Paul and Linda Elder- ethics is a set of concepts and principles that guide us in determining what behavior helps or harms sentient creatures.
- Internet Encyclopedia of Philosophy: The field of ethics (or moral philosophy) involves systematizing, defending, and recommending concepts of right and wrong behavior.

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.2. Some Important Concepts . . . Continued

1.2.1. What is Ethics?. . . continued

- So, ethics can be seen in two senses:
 - As practical science of human conduct- it prescribes norms and rules of human conduct
 - As philosophical field of study- what is good and right.
- It is a branch of philosophy
 - Philosophy is the attempt to think rationally and critically about the most important questions, Miller
- Branches of philosophy:
 - Metaphysics, Epistemology, Axiology, and Logic.
 - Axiology comprises the sub-branches of ethics and aesthetics, each concerned with values.
- As a branch of philosophy it attempts to define what is good?

Chapter One:
Introduction to Legal Profession and Ethics . . . Continued
1.2. Some Important Concepts . . . Continued
1.2.1. What is Ethics? . . . Continued

- Branches of Ethics:
 - Meta-ethics
 - Normative ethics
 - Applied ethics
- **Meta-ethics**- theoretical foundation of ethics,
 - *Metaethics* investigates where our ethical principles come from, and what they mean. Are they merely social inventions? Do they involve more than expressions of our individual emotions? Metaethical answers to these questions focus on the issues of universal truths, the will of God, the role of reason in ethical judgments, and the meaning of ethical terms themselves.
 - Objectivism vs. Relativism
 - Psychological Issues in Metaethics
 - Egoism and Altruism
 - Emotion and Reason
 - Male and Female Morality

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.2. Some Important Concepts . . . Continued

1.2.1. What is Ethics? . . . Continued

- **Normative ethics**- the practical means of determining moral course of action,
- *Normative ethics* takes on a more practical task, which is to arrive at moral standards that regulate right and wrong conduct. This may involve articulating the good habits that we should acquire, the duties that we should follow, or the consequences of our behavior on others.
- The Golden Rule is a classic example of a normative principle: We should do to others what we would want others to do to us.
- Theories of normative ethics:
 - **Virtue Theories**- focuses on good behavior rather than rules of conduct, e.g., benevolence, courage, wisdom, wisdom, courage, temperance and justice.
 - **Duty Theories**- base morality on specific, foundational principles of obligation. Is there a duty towards oneself?
 - **Consequentialist Theories**

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.2. Some Important Concepts . . . Continued

1.2.1. What is Ethics? . . . Continued

- **Applied ethics**- what a person should do in a particular situation or domain of action.
- *applied ethics* involves examining specific controversial issues, such as [abortion](#), infanticide, [animal rights](#), [environmental concerns](#), [homosexuality](#), [capital punishment](#), or nuclear [war](#).

Chapter One:

Introduction to Legal Profession and Ethics

1.2. Some Important Concepts . . . Continued

1.2.2. What is Profession?

- Is philosophy a profession? Is teaching a profession? Is barberry a profession?
- Origin of profession: Latin *professio* that comes in turn from the Greek verb *prophaino*, “to declare publicly.”
- Oxford: a type of job that needs a special training or skill, specially one that needs a high level of education
- Merriam Webster's Dictionary: a calling requiring specialized knowledge and often long and intensive academic preparation

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.2. Some Important Concepts . . . Continued

1.2.2. What is Profession?

- Wow.com: a profession is a vocation founded upon specialized educational training, the purpose of which is to supply disinterested objective counsel and service to others, for a direct and definite compensation, wholly apart from expectation of other business gain.
- Blacks Law Dictionary (9th Ed):
 - 1. A vocation requiring advanced education and training; esp., one of the three traditional learned professions - law, medicine, and the ministry.
 - 2. Collectively, the members of such a vocation.

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.2. Some Important Concepts . . . Continued

1.2.2. What is Profession?

- Encyclopedia.com has identified the following as key features of a profession:
 - Important and exclusive expertise
 - Internal and external recognition
 - Autonomy in matters of expert practice
 - Obligation of professions and professionals-professional ethics

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.2. Some Important Concepts . . . Continued

1.2.2. What is Profession?

- A teaching material prepared by the Justice and Legal System Research (MJLSR) identified the following features of a profession:
 - Extensive training in particular field
 - Intellectual component in the training
 - Community service
- The practice of a specialized expertise and the special moral commitment associated with it is what most differentiate a profession from other occupations

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.2. Some Important Concepts . . . Continued

1.2.2. What is Profession?

- Designprofessionalism.com has identified the following fundamental characteristics of a profession:
 - Great responsibility
 - Accountability
 - Based on specialized, theoretical, knowledge
 - Institutional preparation
 - Autonomy
 - Clients rather than customers
 - Direct working relationships
 - Ethical constraints
 - Merit-based

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.2. Some Important Concepts . . . Continued

1.2.3. Professional Ethics

- If profession is an occupation that requires a specialized education and training a professional is one who belongs to a given profession.
- Blacks Law Dictionary (9th Ed)
 - professional, *n.* (1846) *A person who belongs to a learned profession or whose occupation requires a high level of training and proficiency.*
- Professional Ethics is the personal and corporate rules that govern behavior within the context of a particular profession.
Your Dictionary
- Professional Ethics encompass the personal, organizational and corporate standards of behavior expected by professionals.
Wikipedia
- Why do we need professional ethics?

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.2. Some Important Concepts . . . Continued

1.2.4. Legal Ethics

- Legal ethics is the professional ethics for lawyers
- Definition of Legal Ethics by Blacks Law Dictionary (9th Ed)
 - 1. Standards of professional conduct applicable to members of the legal profession.
 - 2. The study of such standards.
 - 3. A lawyer's practical observance of or conformity to established standards of professional conduct.
- Legal Ethics denotes that body of principles by which the conduct of members of the legal profession is controlled.
- It is that branch of moral science which treats of the duties which an attorney at law owes to his clients, to the courts, to the bar and to the public. (G.A. Malcolm, Legal and Judicial Ethics 8 (1949))

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.2. Some Important Concepts . . . Continued

1.2.4. Legal Ethics

- A note cited on Black's Law Dictionary:
"In one sense, the term 'legal ethics' refers narrowly to the system of professional regulations governing the conduct of lawyers. In a broader sense, however, legal ethics is simply a special case of ethics in general, as ethics is understood in the central traditions of philosophy and religion. From this broader perspective, legal ethics cuts more deeply than legal regulation: it concerns the fundamentals of our moral lives as lawyers." Deborah L. Rhode & David Luban, *Legal Ethics 3* (1992). [Emphasis added]

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.2. Some Important Concepts . . . Continued

1.2.4. Legal Ethics

- Wow.com: Legal ethics, principles of conduct that members of the legal profession are expected to observe in their practice. They are an outgrowth of the development of the legal profession itself.
- Uslegal.com: legal ethics is the minimum standards of appropriate conduct within the legal profession. It is the behavioral norms and morals which govern judges and lawyers.
- Cleverism.com: Legal ethics refers to the code of conduct regulating and instructing behavior of persons within the legal profession.
- Legal ethics, law and morality

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.3. Moral Issues and Moral Dilemmas

- A lot of moral issues and dilemmas are encountered by legal professionals
- Issues of fact and issues of value
- Can we escape deciding moral dilemmas?
 - *“Moral dilemmas involve situations in which one cannot escape deciding in which not to decide is to decide and in which doing nothing has the moral status of doing something.”* Callahan
- E.g., A lawyer may face to decide between integrity and confidentiality when he knows her client has committed a crime; A judge facing the difficult choice between the competing values of freedom of expression and impartiality

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.3. Moral Issues and Moral Dilemmas . . . continued

- **SERENA STIER:**
- Lawyering, like living, often requires making difficult choices among important, competing values.
- Lawyers cannot be persons of integrity because they must choose between either being a good person or a good lawyer.
- Role-differentiation critics characterize lawyers as mere legal technicians who assist clients to achieve their goals regardless of the content of those goals and using whatever lawful means are required.
- Lawyers have to divide themselves into separate beings. One is a person who is guided by the requirements of common morality. The other is a lawyer who is guided solely by role morality.
- Legal agents vs. moral agents
- The role-differentiation thesis implies that it is not possible to be both a good person and a good lawyer because the moral standards for personhood and lawyerhood are different.

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.4. The Theory of Moral Obligation

- Why should I obey the law?
- Do moral obligations exist?
- Why do we study theory of moral obligations?
- Theories of moral obligations:
 - Utilitarianism,
 - Categorical Imperatives, and
 - Golden Rule

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.4. The Theory of Moral Obligation

1.4.1. Utilitarianism

- According to Jeremy Bentham and John Stuart Mill, an action that promotes happiness is right and the reverse is wrong.
- According to utilitarian theory, right and wrong actions are determined based on their consequence- consequentialism
- Utilitarianism:
 - Act Utilitarianism-
 - Rule utilitarianism-

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.4. The Theory of Moral Obligation . . . continued

1.4.1. Utilitarianism . . . continued

A- Act Utilitarianism- holds that *an action is right if and only if it produces the best consequences*

- James Rachels summarizes act utilitarianism in the following terms:
 - First, actions are to be judged right or wrong solely in virtue of their consequences. Nothing else matters. Right actions are, simply, those that have the best consequences.
 - Second, in assessing consequences, the only thing that matters is amount of happiness or unhappiness that is caused. Every thing else is irrelevant. Thus, right actions are those that produce the greatest balance of happiness over unhappiness.
 - Third, in calculating the happiness over unhappiness that will be caused, no one's happiness is to be counted as more important than anyone else's. Each person's welfare is equally important (Schwartz 10).
- Torture of a terrorist would be morally right accordingly?

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.4. The Theory of Moral Obligation . . . continued

1.4.1. Utilitarianism . . . continued

B- Rule Utilitarianism- an action is right if and only if it is in accordance with a set of rules conformity which produces the best consequences.

- The set of rules are rules of general conformity that produce the best consequences
- Rule Utilitarianism implies that an action is wrong if it is in accordance with a rule which, if everyone followed it, would have bad consequences.
- Eg- stealing few from a rich person may not be wrong but it would if every one follows that

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.4. The Theory of Moral Obligation . . . **continued**

1.4.2. The Golden Rule

- The golden rule is also called ethic of reciprocity.
- Treat others as you want to be treated
- This is putting oneself at the shoes of the other person
 - E.g. since we don't want to be discriminated based on color we don't have to discriminate people on this basis

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.4. The Theory of Moral Obligation . . . continued

1.4.3. Categorical Imperative

- Immanuel Kant defined imperative as any proposition that declares a certain action (or inaction) to be necessary.
- Imperatives: hypothetical and categorical
- Hypothetical Imperatives- applies to someone who wishes to attain certain ends. If I wish to pass this exam, I must study
- Categorical Imperatives- absolute imperative and an end in itself. First formulation
- Encyclopedia Britannica: categorical imperative in the ethics of Immanuel Kant is, a moral law that is unconditional or absolute for all agents, the validity or claim of which doesn't depend on any ulterior motive or end.
 - Act only according to that maxim by which you can at the same time will that it should become a universal law
 - Act as to treat humanity, whether in your own person or in another, always as an end, and never as only a means.

Chapter One:

Introduction to Legal Profession and Ethics . . . Continued

1.4. The Theory of Moral Obligation . . . continued

1.4.3. Categorical Imperative . . . continued

A. Using others as means - using others as means is okay but using others as mere means is against the moral principle of Kant e.g.

deception, coercion

B. Treating Others as Ends in Themselves- treating others as rational and autonomous beings with their own maxims.

CHAPTER TWO

THE LEGAL PROFESSION

Matters of discussion:

2.1. Meaning and Nature of Legal Profession

2.2. Admission to the Legal Profession

a) Canada

b) South Africa

c) U.S

d) Ethiopia

2.3. Constitutional Right to Exercise Legal Profession

2.4. Dissatisfaction with Legal Profession

2.5. Bar Associations and their Role in Legal Profession

a) American Bar Association

b) Ethiopian Bar Association

2.6. Unauthorized Practice in Legal Profession

CHAPTER TWO

THE LEGAL PROFESSION . . . Continued

- **Objectives:**

- Distinguish legal profession from other professions
- List requirements for admission to the legal profession
- Analyze Constitutional right to choose and exercise legal profession
- Explain the attitudes of the members of the society towards legal profession
- Discuss the role of bar associations in the legal profession
- Explain the meaning and effects of unauthorized practice of law

CHAPTER TWO

THE LEGAL PROFESSION . . . Continued

2.1. Meaning and Nature of Legal Profession

- What is legal profession? Does it include all persons trained in law?
- The legal profession is sometimes restricted to apply only to attorneys. But broadly speaking it may include public prosecutors, judges, lawyers, court registrars . . .
- Encyclopedia Britannica: legal profession is a vocation that is based on expertise in the law and in its applications.
- Legal profession is the collective name given to lawyers.

CHAPTER TWO

THE LEGAL PROFESSION . . . Continued

2.1. Meaning and Nature of Legal Profession . . . Continued

- the legal profession vs. Business:
 - Profession of law is essential in a complex society- the alternative to the reign of law is the chaos of the jungle
 - Legal profession is an occupation that requires advanced training in law- it is not just business
 - Legal profession is related to administration of justice- fees are just incidental
 - Legal professionals work for the welfare of the society- they protect order, justice and liberty.
 - Cooperation instead of competition- justice and liberty instead of commodity
- the primary consideration in the practice of the law profession is the rendition of service to the public, service to humanity, i.e., to help those who seek justice so that every one is given his due. **GOZON**,
- The ethics does not cultivate the mind, the ethics seeks to cultivate the heart of the members of the profession. **GOZON**

CHAPTER TWO

THE LEGAL PROFESSION . . . Continued

2.2. Admission to the Legal Profession

- Admission to the legal profession is usually started with admission to the Bar

a. Canada

- A person should pass through four distinct stages of legal education to be admitted to the bar in Canada. The stages are:
 - Undergraduate pre-law degree,
 - LSAT (Law School Admission Test),
 - Law School (Bachelor of Laws/ LLB; or Juris Doctor, JD), (French Civil Law of Quebec or English Common Law)and
 - Bar Admission Course and Articling- bar admission courses and bar qualification exam (Barristers Exam and Solicitors Exam); practical articles with a licensed lawyer; and then conferred with the degree of Barrister at Law.

CHAPTER TWO

THE LEGAL PROFESSION . . . Continued

2.2. Admission to the Legal Profession

b. South Africa

- In South Africa, a person should pass through five stages of education and qualification to become an attorney.
- These stages are:
 - L.L.B. degree of not less than four years ;
 - attendance at a practical legal training school;
 - service under articles of clerkship or service contract;
 - Appropriate legal practice in a public interest law firm; and
 - Attorney's Admission Exam presented by the Law Society.
- Personal fitness (moral character)- checked by the Law Society and High Court

CHAPTER TWO

THE LEGAL PROFESSION . . . Continued

2.2. Admission to the Legal Profession

c. U.S.

- Lawyers are admitted to practice in States; Admission to the Bar is state matter
- The steps are:
 - Bachelor degree;
 - LSAT (Law School Admission Test);
 - Law School;
 - State Bar Exam;
 - Character and Fitness Review;
 - Oath; and
 - License from State Supreme Court or High Court.

CHAPTER TWO

THE LEGAL PROFESSION . . . Continued

2.2. Admission to the Legal Profession

d. Ethiopia

- Admission to the legal profession in Ethiopia/ like in the U.S., is left to states.
- According to Article 3 and 7 of FCALRP No. 199/2000 there are three types of licenses:
 - federal first instance court advocacy license;
 - federal courts advocacy license; and
 - federal court special advocacy license.

CHAPTER TWO

THE LEGAL PROFESSION . . . Continued

2.2. Admission to the Legal Profession

d. Ethiopia . . .continued

- The followings are some common requirements to obtain these licenses.
 - Graduation from legally recognized institution;
 - Relevant experience;
 - suitable code of conduct for assisting in the proper administration of justice;
 - pass mark in the advocacy entrance examination;
 - no conviction and sentence in an offense showing an improper conduct;
 - documents evidencing entrance into a professional Indemnity Insurance Policy; and
 - Taking an Oath.
- What difference can you observe in the admission from the other jurisdictions? The role of Bars and Law Societies?

CHAPTER TWO

THE LEGAL PROFESSION . . . Continued

2.3. Constitutional Right to Exercise Legal Profession

- Choosing one's means of livelihood, occupation or profession is a constitutional right [FDRE Constitution: Art, 41(2)]
- So, every Ethiopian can choose to be a lawyer.
- Do you think the requirements under the Advocates Proclamation are limitations to this right?

2.4. Dissatisfaction with Legal Profession

- Dissatisfaction with the legal profession is as old as the profession itself.
- Causes of dissatisfaction:
 - abuse of adversary system- legal education, incivility among advocates
 - Commercialization of the legal profession- business instead of service and high charge

CHAPTER TWO

THE LEGAL PROFESSION . . . Continued

2.5. Bar Associations and their role in Legal Profession

- Bar associations play a very crucial role in shaping the legal profession in the right way though their role differ in their strength

A. American Bar Association (ABA)

- Founded in 1878, the ABA is committed to:
 - supporting the legal profession with **practical resources** for legal professionals while improving the administration of justice,
 - accrediting law schools,
 - establishing model ethical codes, and more.
- The American Bar Association is one of the world's largest voluntary professional organizations, with over 400,000 members and more than 3,500 entities.

CHAPTER TWO

THE LEGAL PROFESSION . . . Continued

2.4. Bar Associations and their role in Legal Profession

A. American Bar Association (ABA) . . . Continued

- ABA has four goals:
 - **serving members-** professional growth and quality of life
 - **improving the legal profession-** legal education and ethical standards
 - **eliminating bias and enhancing diversity-** in the legal profession and the justice system
 - **advancing the rule of law:**
 - Increase public understanding of and respect for the rule of law
 - Hold governments accountable under law
 - Work for just laws, including human rights, and a fair legal process
 - Assure meaningful access to justice for all persons
 - Preserve the independence of the legal profession and the judiciary.
- Since that first meeting, the ABA has played a formative role in the development of the profession of law in the United States.

CHAPTER TWO

THE LEGAL PROFESSION . . . Continued

2.5. Bar Associations and their role in Legal Profession

B. Ethiopian Bar Association (EBA)

- The Ethiopian Lawyers' Association (ELA) is a professional association of attorneys established with the aim of promoting the interest of its members and the development of the legal profession.
- It also upholds rule of law, the independence of the judiciary, good governance and human rights.
- Advocates' Welfare Association in 1965- Advocates' Association in 1966- Ethiopian Bar Association in 1967
- **Immediate Objectives:**
 - Promote the participation of its members and activate the various organs of the Association
 - Provide legal assistance for those who are needy.
 - Perform sustained activities to create public awareness about the Association, law and human rights.
 - Make the necessary preparations for the construction of the

CHAPTER TWO

THE LEGAL PROFESSION . . . Continued

2.5. Bar Associations and their role in Legal Profession

B. Ethiopian Bar Association (EBA)

- The Ethiopian Bar Association (EBA) conducts three activities:
 - Continuing Legal Education (CLE),
 - Law Reform and Advocacy, and
 - Legal Aid Services.
- EBA has about 533 members out of which only 24 are women lawyers.
- It participates in different governmental committees
- The role of EBA is insignificant when compared with the role ABA plays.
- EBA does not control conducts of advocates independently

CHAPTER TWO

THE LEGAL PROFESSION . . . Continued

2.6. Unauthorized Practice in Legal Profession

- The common practice of law includes counseling, drafting legal documents and representation.
- According to Garner unauthorized practice of law is “the practice of law by a person, typically a non lawyer, who has not been licensed or admitted to practice law in a given jurisdiction”
- Uslegal.com: the unauthorized practice of law is the practice of law by persons or entities not authorized to practice law pursuant to state law
- unauthorized practice of law vs. legal malpractice
- Art 3(1) of the FCALRP No. 199/2000 requires any Ethiopian who wishes to render advocacy services to hold a license.
- Art 31 of this proc makes unauthorized practice of law a criminal act punishable with fine or imprisonment of 6 months – 2 years

CHAPTER THREE

JUDICIAL ETHICS

Matters of Discussion:

3.1. Ethical Duties of Judges in Judicial Activities:

- ✓ Independence, Accountability, Impartiality, Competence and Diligence, Equality, Civility among Judges, propriety

3.2. Ethical Requirements of Judges in Extra-Judicial Activities

3.3. Appointment, Withdrawal, Transfer, Promotion and Removal of Judges:

- ✓ cases of US, India and Ethiopia

3.4. Factors that Influence Ethical Requirement of Judges

3.5. Liability (Responsibility) for Breach of Rules of Conduct:

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

❖ Unit objectives:

- Discuss ethical duty of judges in and out of court
- Explain the process of judicial appointment, withdrawal and removal.
- Identify factors that affect ethical duties of judges
- Analyze Rules of Judicial Ethics to identify their violations
- Identify rationales behind Rules of Judicial Ethics
- Identify purposes that Rules of Judicial Ethics serve
- Determine liability for judges who violate Rules of Judicial Ethics
- Respect Rules and Principles of Judicial Ethics

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.1. Ethical Duties of Judges in Judicial Activities

- Judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens [preamble to the Basic Principles on the Independence of the Judiciary 1985(Milan Principles)]
- A competent, independent and impartial judiciary is essential
 - to fulfill its role in upholding constitutionalism and the rule of law. [THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT 2002 (Bangalore Principles)]
 - To enhance economic growth [World Bank Group, 2001]
- Do judges have ethical duties with regard to their

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.1. Ethical Duties of Judges in Judicial Activities

- ❖ Bangalore Principles has identified six core principles of judicial conduct:
 - Independence, Impartiality, Integrity, Propriety, Equality, Competence and Diligence

ABA Model Code of Judicial Conduct:

- **CANON 1**
A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.
- **CANON 2**
A judge shall perform the duties of judicial office impartially, competently, and diligently.
- **CANON 3**
A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.
- **CANON 4**
A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.
- ❖ Accountability not identified in both Bangalore Principles and in ABA Rules?

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.1. Ethical Duties of Judges in Judicial Activities

3.1.1. Independence

- What is judicial independence?
- Judicial Independence means independence of the judiciary from the other branches of government and independence of judges in performing their judicial activities.
- Aspects of Judicial Independence [JOHN FEREJOHN]:
 - internal (or normative) aspect-
 - judges should be autonomous moral agents to carry out their public duties independent of venal or ideological considerations.
Character of judges
 - and external (or institutional) aspect-
 - Providing institutional shields against the threats or temptations that might come their way.
 - **Institutional Independence** - freedom from the other branches
 - **Individual Independence**- Security of tenure and financial security guarantee decisional independence

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.1. Ethical Duties of Judges in Judicial Activities

3.1.1. Independence . . . Continued

- Three characteristics of a truly independent judiciary:
 - First, it is impartial. Judicial decisions are not influenced by a judge's personal interest in the outcome of a case.
 - Second, judicial decisions, once rendered are respected.
 - Third, the judiciary is free from interference. Parties to a case, or others with an interest in its outcome, cannot influence the judge's decision. [World Bank Group, 2001]

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.1. Ethical Duties of Judges in Judicial Activities

3.1.1. Independence . . . Continued

- Independence from whom?
 - Insulating judges from officials of other branches of government is often taken to be the most important aspect of judicial independence. [World Bank Group, 2001]:
- Why?
 - Government poses perhaps the most serious threat to judicial independence for two reasons:
 - it has a potential interest in the outcome of myriad cases, and
 - it has so much potential power over judges. [World Bank Group, 2001]:

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.1. Ethical Duties of Judges in Judicial Activities

3.1.1. Independence . . . Continued

- Is judicial independence **a means or an end**?
- It's a means not an end by itself; it has no intrinsic value
- End:
 - Right of fair and public hearing by a competent, independent and impartial tribunal established by law. [ICCPR 14(1)]
 - “the right to be tried by an independent and impartial tribunal is an absolute right that may suffer no exception” [The Human Rights Committee]
 - Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. [Value 1 of Bangalore Principles]
 - Shielding decision making in individual cases from undue external influences and providing for a genuinely impartial arbiter. Michal Bobek

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.1. Ethical Duties of Judges in Judicial Activities

3.1.1. Independence . . . Continued

- “A judge must have the freedom to decide cases based on the facts and the law—not based on **public opinion, the views of special interest groups or even a judge’s own personal beliefs**. The **right of every citizen to a fair trial** is a cornerstone of our democracy. Without judicial independence and impartiality, this right would be compromised.”
[League of Women Voters of Ohio]

❖ Ultimate end: Fair trial and Rule of Law

- Is judicial independence right or duty?
 - A judge shall uphold and exemplify judicial independence in both its individual and institutional aspects. [Value One of Bangalore Principles]
- See for the application in Bangalore Principles and Milan Principles.
- The judiciary, and the judge, has the duty to maintain judicial independence

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.1. Ethical Duties of Judges in Judicial Activities

3.1.1. Independence . . . Continued

- Judicial independence under the FDRE Constitution:
 - Art. 78 (1) “An independent judiciary is established by this Constitution.”
 - Art 79:
 - (2) Courts of any level shall be free from any interference of influence of any **governmental body, government official** or from **any other source**.
 - በየተኛውም ደረጃ የሚገኝ የዳኝነት አካል ከማንኛውም የመንግስት አካል፣ ከማንኛውም ባለስልጣንም ሆነ ከማንኛውም ሌላ ተፅዕኖ ነፃ ነው።
 - (3) Judges shall exercise their functions in full independence and shall be directed solely by the law.
 - ዳኞች የዳኝነት ተግባራቸውን በሙሉ ነፃነት ያከናውናሉ። ከህግ በስተቀር በሌላ ሁኔታ አይመሩም።
 - (4) Security of tenure- JACs decision to remove a judge on the grounds of **disciplinary measure** or **gross incompetence or inefficiency** or **illness** + **HPRs approval**.

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.1. Ethical Duties of Judges in Judicial Activities

3.1.2. Accountability

- Is accountability a duty?
- Why the FDRE Constitution talks about Judicial Independence instead of Judicial Independence and Accountability?
- Accountability of any public official has been declared under Art. 12 of FDRE Constitution
 - Art 12 (2) “Any public official or an elected representative is accountable for any failure in official duties.”
- Are judges accountable? How?
- English Justice Learned Hand. Donaldson says:
 - “Judges are without constituency and answerable to no one except **to their consciences and the law**”
- ❖ How do you see this statement?

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.1. Ethical Duties of Judges in Judicial Activities

3.1.2. Accountability . . . Continued

- According to Michael Kirby, Judges are accountable on three grounds:
 - First, judges render decision in public.
 - Second, decision of judges is reviewed by the appellate court.
 - Finally, Judges are appointed by executives or legislature who is accountable to the people.
- Michael Kirby also identified criticism and comment on judgments as accountability mechanisms.
- ግምገማ as a means of accountability?
- Disciplinary measures FDRE Cons (Article 79(4)(a))
- Legal error as ground of accountability?

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.1. Ethical Duties of Judges in Judicial Activities

3.1.3. Impartiality

- In the 17th century, Sir Matthew Hale devised a code of judicial conduct for his own use, which included a rule that stated:
 - “I never engage myself in the beginning of any cause, but reserve myself unprejudiced till the whole be heard.”
Charles Gardner Geyh
- “Impartiality means the judge has no personal stake in the outcome.”[*Aharon Barak*]
- Absence of bias is essential to the judicial process – this is why when you see a statue of justice in the United States, she is blindfolded.”[ibid]
- Impartiality of a judge implies performing his or her judicial duties without favor, bias or prejudice.

CHAPTER THREE
JUDICIAL ETHICS . . . Continued

3.1. Ethical Duties of Judges in Judicial Activities

3.1.3. Impartiality . . . Continued

**The
Lady
Justice**

**She is the
allegorical
personification
of the moral
force in judicial
system.**



**Here
attributes
are:
A
blindfold,
A balance,
and
A sword.**

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.1. Ethical Duties of Judges in Judicial Activities

3.1.3. Impartiality . . . Continued

- "Four things belong to a judge: to hear courteously, to answer wisely, to consider soberly, and to decide impartially." [Socrates]
- Impartiality is the internal aspect of judicial independence:
 - judges should be autonomous moral agents to carry out their public duties independent of venal or ideological considerations. [JOHN FEREJOHN]
- Is perfect impartiality attainable?
- No, it's not. A judge can not be perfectly impartial, but she can be impartial enough to fulfill her role as a judge

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.1. Ethical Duties of Judges in Judicial Activities

3.1.3. Impartiality . . . Continued

- Impartiality is essential to the proper discharge of the judicial office. It applies to a decision and to its process.
[Value 2 of Bangalore Principles]
- impartial administration of justice is the goal of independent judiciary.
- No one can be a judge in his own case
- Impartiality:
 - Subjective- a judge shows prejudice or bias in his conduct or utterance , e.g., unjustified reprimands of advocate, offensive remarks about litigants, ex parte communication,
 - Objective impartiality- when a reasonable observer has no doubt in the impartiality of the judge, e.g., one party is her husband; she has been a witness to the matter

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.1. Ethical Duties of Judges in Judicial Activities

3.1.3. Impartiality . . . Continued

- Categories of partiality [**Charles Gardner Geyh**]:
 - A. judges who have personal interests in case outcomes;
 - B. judges who have relational interests in case outcomes; [“A good lawyer knows the law; a great lawyer knows the judge.”]
 - C. judges who have political interests in case outcomes; and
 - D. judges who have personal biases for or against case participants. Based on race, ethnicity, class, gender, sexual orientation . . . [Compassion to the poor or favor to the rich](#)
- Recusal: connection with the parties or their advocates, with the case or other similar ground [Article 27(1) of Federal Courts Proclamation No. 25/1996; Principle 2.5 of Bangalore Principles]
- Ungrounded request for recusal

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.1. Ethical Duties of Judges in Judicial Activities

3.1.4 Competence and Diligence

- Competence and diligence are prerequisites to the due performance of judicial office. [Value 6 of Bangalore Principles]
- The judicial duties of a judge take precedence over all other activities. [Principle 6.1 of Bangalore Principles]
- The ethical duty of competence requires “legal knowledge, skill, thoroughness and preparation” (United Nations Office on Drugs and Crime 129).
- A judge is diligent when she “considers soberly, decides impartially and acts expeditiously” (Ibid).

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.1. Ethical Duties of Judges in Judicial Activities

3.1.4. Competence and Diligence . . . Continued

- Diligence can be affected:
 - by the burden of work, adequacy of resources, time for research, deliberation and writing, and judicial duties other than sitting in courts (Ibid).
- Can a judge raise ignorance of the law for her incompetence?
- A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties [Principle 6.3 of Bangalore Principles]
- Gross incompetence or inefficiency is a ground of removing a judge [Art 79(4)(a)]

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.1. Ethical Duties of Judges in Judicial Activities

3.1.5. Equality

- “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.” [Art 25 of FDRE Cons]
 - Almost similar provisions are found in almost all international human rights instruments.
 - Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office. [Value 5 of Bangalore Principles]
 - a judge shall equally treat all litigants before the courts and protect their right. [Art. 5 of Federal Judges Code of Conduct]
 - A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds. [5.2 of Bangalore Principles]
- ❖ Equality vs. Impartiality?

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.1. Ethical Duties of Judges in Judicial Activities

3.1.6. Civility among Judges

- Article 9 of Code of Judicial Conduct requires federal court judges to carry out their judicial duties in cooperation with their colleague. It requires judges to respect one another.
- Civility among judges is one of the hallmarks of judicial temperament (Ross 958).
- Judges should avoid making personal attack of fellow judges when they write majority opinions, concurring opinions or dissenting opinions.
- Judges should bear in mind that they are sitting “in judgment of cases, not fellow judges” (Ross 959).

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.1. Ethical Duties of Judges in Judicial Activities

3.1.7. Propriety

- Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge. [Value 4 of Bangalore Principles]
- A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities. [4.1 of Bangalore Principles]
- A judge's individual freedom vs. the dignity of the judicial office?
 - “Judicial ethics, where it counts, is often hidden from view, and no rule can possibly ensure ethical judicial conduct. Ultimately, there is no choice but to trust the judges. To my mind, we'd all be better off in a world with fewer rules and a more clear-cut understanding that **impartiality and diligence** are obligations that

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.2. Ethical Requirements of Judges in Extra Judicial Activities

- Needless to say, judges have live off the bench.
- Art 27&28 of the Federal Code of Judicial Conduct prohibit, in general term, activities which are inconsistent with judicial duties and using the office for advancing personal interest.
- A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else. [4.9 of Bangalore Principles]
- Allowed and prohibited extra-judicial activities: see 4.11- 4.16 of Bangalore Principles

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.2. Ethical Requirements of Judges in Extra Judicial Activities

- **Examples:**
 - Passive investment
 - Active Management and Involvement in Business
 - Practice of law
 - Arbitration and mediation
 - Legal education
 - Political activities- “No person may simultaneously assume judgeship while serving in the legislative or executive branches of government or while a member of any political organization.” PROCLAMATION NO. 684/2010 AFJACEP Art 11(2)
 - Membership in organizations- freedom of expression, belief, association and assembly vs. preserving the dignity of the judicial office and the impartiality and independence of the judiciary. [4.6 of Bangalore Principles]

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.3. Appointment and Tenure of Judges

3.3.1. Judicial Appointment

- The selection, appointment, and promotion procedures, as well as the transparency of those procedures are important for both
 - securing judicial independence and
 - promoting public understanding and confidence in the courts.
- Models of judicial appointment: Career vs. recognition models
 - Career judiciaries- judges join the judiciary at a young age and remain there for their entire careers (civil law tradition)
 - Recognition judiciaries - judges are appointed later in life in recognition of other career achievements (common law traditions)
- How about the Ethiopian one?

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.3. Appointment and Tenure of Judges

3.3.2. Judges' Tenure and Removal Mechanisms

- What has judicial tenure and removal to do with judicial independence? Should judges be appointed for life?
- Mechanisms of judicial tenure and removal are important for securing judicial independence
- How about transfer, promotion and disciplining of judges?

3.3.3 Criteria for Appointment of Judges

- Legal knowledge and Skill
- Personal Qualities
- Specialization
- Any other else?

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.3. Appointment and Tenure of Judges

3.3.4 Appointment of Judges in different Countries

A. United States

- Justices of the Supreme Court, judges of the courts of appeals and the district courts are nominated and appointed by the President of the United States and must be confirmed by the Senate.
- Article III of the Constitution states that these judicial officers are appointed for a life term. For life? During good behavior?
 - For life means they work until they resign, die, or are removed by impeachment.
- One judge has ever been impeached but aborted following its consideration as purely political (Samuel, 1805)
- Appointment for life secures justices against retribution
- The judiciary plays no role in the nomination or confirmation process

CHAPTER THREE
JUDICIAL ETHICS . . . Continued

3.3. Appointment and Tenure of Judges

3.3.4 Appointment of Judges in different Countries

A. United States . . . Continued

- Appointment of judges in States:
- It differs from state to state
 - Partisan election
 - Non-partisan election
 - Legislative election
 - Governor election
 - Merit selection

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.3. Appointment and Tenure of Judges

B. India

- Two main categories of the Indian judiciary:
 1. higher judiciary (High Courts and Supreme Court);
and
 2. lower judiciary (the rest is lower judiciary).
- The process of appointment to lower judiciary is carried out by the state public service commissions or through the high courts.
 - Examination, less politicized
- Process of appointment in the higher judiciary:
 - Through Promotion from Lower Judiciary
 - Through direct elevation of practicing lawyers

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.3. Appointment and Tenure of Judges

B. India . . . Continued

- Judges of the higher judiciary are appointed by the executive and judiciary.
 - Supreme Court judges- president + consultation with chief justice
 - High Court judges- president + consultation with state governor
- The legislature has no role in the appointment of the judges.
- But the judges of the Supreme Court cannot be removed from their office without the assent of the legislature.
- Removal of judges- by the President + approval by the houses
- Indian Judicial Appointment: career or recognition judiciary?
- How do you see the Indian Judicial Appointment in upholding judicial independence?

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.3. Appointment and Tenure of Judges

C. Ethiopia

- The President and Vice-President of the Federal Supreme Court shall, upon recommendation by the Prime Minister, be appointed by the House of Peoples' Representatives [Art 81(1) of FDRE Const] [\[no involvement of the JAC\]](#)
- Regarding other Federal judges, the Prime Minister shall submit to the House of Peoples' Representatives for appointment candidates selected by the [JAC](#). [Art 81(2) of FDRE Const]
- Is appointment of judges in states the same? [Art 81(3,4) of FDRE Const]
- Criteria for Judicial Appointment [Art 11 of Pro 684/2010]
 - Nationality
 - Loyalty to the Constitution
 - Legal Training or Legal Skill
 - Diligence, Sense of Justice and Good Conduct
 - Consent
 - Age

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.3. Appointment and Tenure of Judges

C. Ethiopia . . . Continued

Removal of Judges:

- Grounds and procedure of removal: [Art 79(4) of FDRE Const]
 - Violation of Disciplinary Rules
 - Gross incompetence or inefficiency
 - Incapacity to carryout judicial duties due to illness
- Decision of the Judicial Administration Council and approval by the legislative organ.
- The executive has no role in removal of judges. How do you see this?
- Ethiopian Judicial Appointment: career or recognition judiciary?
- How do you see the Ethiopian judicial appointment and removal procedure in upholding judicial independence?

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.4. Factors that Influence Ethical Requirement of Judges

- Among the multitude of factors affecting the ethical conduct of judges:
 - Remuneration;
 - The term of office of judges, . . . security, adequate remuneration, conditions of service, pensions . . . shall be adequately secured by law. [Art 11 of Milan Principles, 1985]
 - Resource of the court;
 - It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions. [Art 7 of Milan Principles, 1985]
 - Workload; and
 - Off bench activities.

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.5. Liability for Breach of Rules of Conduct

- Violation of ethical rules obviously results in disciplinary measures
- It may also result criminal as well as civil liability
- Civil liability of judges? Immunity?
 - No liability for acts connected with their judicial function
 - Civil Code Art 2138&2139

3.5.1. Disciplining Agency

- Federal Judicial Administration Council is vested with the power of disciplining judges [FDRE Const: Art 81 (6; Art 9(2)with 13 Proc no 684/2010)]

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.5.2. Disciplinary Measures

- According to Article 10 of federal judges rules of disciplinary proceeding the Disciplinary Measures are arranged in ascending order from simple to serious penalty. They are:
 - Oral warning
 - Written warning
 - Fine not exceeding three months salary
 - Demotion of the post and cut in salary
 - Removal from office. (needs approval by the legislature)

CHAPTER THREE

JUDICIAL ETHICS . . . Continued

3.5.3 Procedures of Disciplinary Proceedings

- The procedure of disciplining a judge is not an adversarial system. The council both initiates and decides a case
 - **Initiation-** no need of vested interest
 - **Investigation-** unfounded complaints are rejected
 - **Hearing-** continues when proper
 - **Decision-**
 - **Appeal**

CHAPTER FOUR

ADVOCATES' ETHICS

Matters of discussion:

- 4.1. Nature and Meaning of Advocacy
- 4.2. General Duty of Advocates
 - To the client
 - Competent and diligent representation
 - Avoiding conflict of interest
 - Communication
 - Confidentiality
 - To the court
 - To the opposing party and counsel
 - To the community
- 4.3. Contract of Advocacy
- 4.4. Non Professional Subsidiary Activities

CHAPTER FOUR

ADVOCATES' ETHICS . . . Continued

Unit Objective

- discuss the pre conditions to be an advocate
- explain the meaning of an advocate and advocacy service
- Identify the types of advocacy service
- Identify basic ethical principles required of an advocate indifferent relations

CHAPTER FOUR

ADVOCATES' ETHICS . . . Continued

Introductory Remarks

- Moral principles of lawyers
 - Principle of non-accountability:
 - The lawyer, who refuses his professional assistance because in his judgment the case is unjust and indefensible, usurps the functions of both judge and jury. [George Sharswood]
 - When acting as an advocate for a client . . . a lawyer is neither legally, professionally, nor morally accountable for the means used or the ends achieved.
 - Only bounds of the law matters
 - Principle of Professionalism:
 - Maximizing the likelihood of prevailing the client is the business of a lawyer
- ❖ How do you see these principles?

CHAPTER FOUR

ADVOCATES' ETHICS . . . Continued

4.1. Nature and Meaning of Advocacy

- Who is an advocate?
 - Black's Law Dictionary (9th ed.):
 - Advocate- *A person who assists, defends, pleads, or prosecutes for another.*
 - Advocacy:
 - 1. The work or profession of an advocate.
 - 2. The act of pleading for or actively supporting a cause or proposal.
 - Advocate- [Art 2(3): Proc no. 199/2000] a lawyer whose name is registered in a register in order to render advocacy services.
 - Draft proc on advocacy service (2010) (Art 2(4)):
 - advocate means a person who is granted an advocacy license
 - The Advocates Act of Kenya defines an advocate to mean
 - any person whose name is duly entered upon the Roll of Advocates.

CHAPTER FOUR

ADVOCATES' ETHICS . . . Continued

4.1. Nature and Meaning of Advocacy . . . Continued

- Advocacy Service [Art 2(2): Proc no. 199/2000] means
 - the preparation of contracts, memorandum of association, documents of amendment or dissolution, of same, or documents to be adduced in court, litigation before courts on behalf of third parties, and includes rendering any legal consultancy services for consideration or without consideration, or for direct or indirect future consideration.
- Any Ethiopian who wishes to render advocacy services shall hold a license. [Art 3(1): Proc no. 199/2000] + renewal of license [Art 6]
- Persons that may render advocacy service without license [Art 3(2): Proc no. 199/2000]
- Types of license [Art 7: Proc no. 199/2000]:
 - a federal first instance court advocacy license;
 - a federal courts advocacy license; and
 - a federal court special advocacy license.
- Suspension or Revocation of License [Art 15: Proc no. 199/2000]

CHAPTER FOUR

ADVOCATES' ETHICS . . . Continued

4.2. Duty of Advocates

- Lawyers are essential organs in **attaining justice and upholding rule of law**
- Advocate's general responsibility in the the administration of justice [Art 3 of Reg. no 57/99]
- Lawyers shall at all times maintain the honor and dignity of their profession as essential agents of the administration of justice. [Art 12 of Basic Principles on the Role of Lawyers 2000]
- Claim with no legal ground .[Art 4 of Reg. no 57/99]
- Declining advocacy service .[Art 5 of Reg. no 57/99]
- Duty of advocates:
 - To the client
 - To the court
 - To the opposing party and counsel
 - To the community

CHAPTER FOUR

ADVOCATES' ETHICS . . . Continued

4.2.1. Duty of Advocates to the Client

- These duties of **zeal, disinterestedness, and confidentiality** – what might be called the Three Pillars of Advocacy – form the core of an attorney's professional obligations. David Luban

4.2.1.1. Competent and Diligent Representation

- One of the duties of an advocate is serving her client with competence and diligence
- Rendering Competent Service [Art 8: Reg. no 57/99]
 - 1) Any advocate is expected to show a high level of professional competence and skill in the advocacy service he renders.
 - 2) An advocate shall have professional obligation, within the limits of the law:
 - (a) to employ his legal knowledge and work experience to protect the rights and interests of his client;
 - (b) to follow up his client's case diligently and take all the necessary measures carefully and timely so as to obtain a quick and just decision.
- Competence- knowledge, skill, preparation- is ignorance a defence?
- Diligence- carefulness + promptness- lack of negligence + procrastination

CHAPTER FOUR

ADVOCATES' ETHICS . . . Continued

4.2.1. Duty of Advocates to the Client

4.2.1.2. Avoiding Conflict of Interest

- Disinterestedness is another duty of an advocate
- Black's Law dictionary: conflict of interest.
 - 1. A real or seeming incompatibility between one's private interests and one's public or fiduciary duties.
 - 2. A real or seeming incompatibility between the interests of two of a lawyer's clients, such that the lawyer is disqualified from representing both clients if the dual representation adversely affects either client or if the clients do not consent.
- Loyalty is an essential element in the advocate's relationship to a client.
- What type of conflict of interests could an advocate face? See next slide

CHAPTER FOUR

ADVOCATES' ETHICS . . . Continued

4.2.1. Duty of Advocates to the Client

4.2.1.2. Avoiding Conflict of Interest . . . Continued

- Any advocate may not enter into a contract to render professional service when she knows that there exists conflict of interests : [Art 12: Reg. no 57/99]
 - between the client and himself, or
 - between his relatives and his client, or
 - between his partners and his client, or
 - between his clients.
- Conflict of Interests with Former Client [Art 13: Reg. no 57/99]
- When the existence of conflict of interests has been discovered after the service had already begun the advocate shall explain the matter to his client and terminate the service.

CHAPTER FOUR

ADVOCATES' ETHICS . . . Continued

4.2.1. Duty of Advocates to the Client . . . Continued

4.2.1.3. Duty of Communication

- Transparency is another duty of an advocate
- Any advocate shall have the obligation to keep informed his client with the stage the case has reached and its status. The client has the right to get a quick response when he requests for information. [Art 9: Reg. no 57/99]
- Adequate and prompt information about the case
- Obtaining Client's Special Consent [Art 25: Reg. no 57/99].
E.g., declining to raise period of limitation as a defence
- Withholding Information for the interest of the client
 - Can you give an example?

CHAPTER FOUR

ADVOCATES' ETHICS . . . Continued

4.2.1. Duty of Advocates to the Client . . . Continued

4.2.1.4. Duty of confidentiality

- Black's Law dictionary: confidentiality:
 - *1. Secrecy; the state of having the dissemination of certain information restricted.*
 - *2. The relation between lawyer and client or guardian and ward, or between spouses, with regard to the trust that is placed in the one by the other.*
- Why an advocate is under the duty to be confidential?
- Confidentiality is a key to be transparent.
- Confidentiality of Information [Art 10: Reg. no 57/99]
 - 1) information obtained in the course of professional service.
 - 2) information relating to his power of representation and any other information.
 - 3) The obligation may not cease because of termination of the contract with the client.
- Confidentiality is for life

CHAPTER FOUR

ADVOCATES' ETHICS . . . Continued

4.2.1. Duty of Advocates to the Client . . . Continued

4.2.1.4. Duty of confidentiality . . . Continued

- Condition of Disclosure [Art 10& 11: Reg. no 57/99]:
 - When the client consents;
 - when the information he obtained from the client is necessary for the task he is represented;
 - to defend himself or claim his interests in a controversy with the client;
 - when a controversy arises concerning his power of representation; or
 - to perform his obligations as expressly provided otherwise by law. E.g.,
 - Failure to report Crimes Against the Defense Forces and Breaches of Military Obligations. Art 335 (2) CrCo; Proc 780/2013 anti-money laundering

CHAPTER FOUR

ADVOCATES' ETHICS . . . Continued

4.2.2. Advocates duty to the Court

- two maxims :
 - first, the advocate is an officer of court, and
 - second, the advocate is not a party to the dispute.
- do you agree with these maxims?
- *The duty not to submit or aid the submission of false evidence in court:*
- *The duty not to interfere with the due process of court:*
- Obligations of Advocate in Proceedings [Art 56: Reg. no 57/99]

CHAPTER FOUR

ADVOCATES' ETHICS . . . Continued

4.2.3. Duty to opposing party and opposing counsel

- Best interest of their client vs. duty to opposing party
- Any advocate may not bring a case and defend a proceeding merely to harass an opposing party [Art 28: Reg. no 57/99]
- fair and courteous treatment; refrain from using abusive or threatening language.
- Duty of fairness to an opposing party [Art 29: Reg. no 57/99]
- Advocate's duty to an unrepresented party [Art 30: Reg. no 57/99]
- Advocate's duty to colleagues [Art 55: Reg. no 57/99]

CHAPTER FOUR

ADVOCATES' ETHICS . . . Continued

4.2.4. Duty to the community/nation

- Is there any duty to the community?
 - Duty of building public trust- 'lawyers are liars',
 - doctors inhabit the first circle of hell, lawyers the second
 - Duty of creating awareness of the public about the law and administration of justice – e.g., many people consider bail as absconding method
- Pro bono publico service [Art 49: Reg. no 57/99]
 - Any advocate shall render at least 50 hours of legal service, in a year, free of charge or upon minimum payment, to:
 - 1) Persons who can not afford to pay;
 - 2) Charity organizations, civic organizations, community institutions;
 - 3) Persons to whom courts requests legal services;
 - 4) Communities and institutions that work for improving the law, the legal profession and the justice system.

CHAPTER FOUR

ADVOCATES' ETHICS . . . Continued

4.2.4. Duty to the community/nation

- Duty of an advocate to oneself?
- Communications Concerning Services [Art 50: Reg. no 57/99]
 - Any advocate may not give false or misleading communication about himself or his services.
- Advertising legal service [Art 52: Reg. no 57/99]

CHAPTER FOUR

ADVOCATES' ETHICS . . . Continued

4.3. Contract of Advocacy

- As a contract it is governed by the general principles of contract
- But as a contract of professional service, it has its own peculiar features
- Freedom of contract in contract of advocacy restricted by ethical constraints
- **Declining advocacy service:**
 - Can an advocate say no to render advocacy service on the ground that the case is immoral or a crime is heinous? [Art 5 of Reg. no 57/99]
- Object of contract of advocacy:

CHAPTER FOUR

ADVOCATES' ETHICS . . . Continued

4.3. Contract of Advocacy . . . Continued

A. Scope of Representation

The object of contract of advocacy is rendering legal service for fee

- Scope of the legal service is to be determined by the contract
- The advocate should respect the clients decisions so long as they are not illicit
 - When the assistance required or service requested by the client is in violation of these regulations or other law, the advocate shall explain the reason why he can not render service and dismiss the client if the client fails to make corrections based on the advice given. [Art 7(3): Reg. no 57/99]

CHAPTER FOUR

ADVOCATES' ETHICS . . . Continued

4.3. Contract of Advocacy . . . Continued

B. Fee

- Fee is contractual though it has restrictions
- The fee any advocate requires from his client shall be **fair and reasonable**. The following factors must be considered in determining the amount of the fee: [Art 42: Reg. no 57/99]
 - 1) the time and labor required of the service given to the client;
 - 2) the skill required to perform the service properly, the novelty and difficulty of the case;
 - 3) the likelihood that the particular agreement with a client will preclude the advocate from dealing with other clients' cases;
 - 4) the fee ,customarily charged for similar legal services;
 - 5) the amount the claim involved and the results obtained;
 - 6) the length of the professional relationship with the client;
 - 7) the experience, reputation and ability of the advocate; and
 - 8) similar other factors.

CHAPTER FOUR

ADVOCATES' ETHICS . . . Continued

4.3. Contract of Advocacy . . . Continued

B. Fee . . . Continued

- **Contingent Fee Agreement** [Art 44: Reg. no 57/99]
- Contract of advocacy is not a contract of result but a contract of diligence
- But contingent fee agreement is allowed
- Contingent fee agreement is not allowed on: [Art 45: Reg. no 57/99]
 - Divorce and alimony of support
 - Criminal decision and penalty

CHAPTER FOUR

ADVOCATES' ETHICS . . . Continued

4.4. Non-professional Subsidiary Activities

- An advocate may engage in subsidiary activities so long as it doesn't affect the loyalty, independence, competence and honor of his advocacy profession. [Art 23(1): Reg. no 57/99]
- In this case, the advocate has an obligation to notify her client about the nature and extent of her subsidiary activities [Art 23(2): Reg. no 57/99]
- Can you mention activities that would affect advocate's professional duty?

CHAPTER FIVE

ETHICS OF THE PUBLIC

PROSECUTOR

Matters of discussion:

- 5.1. The Concept of Prosecution
- 5.2. **Eligibility**
- 5.3. **Ethical Principles for the Functions of Public Prosecutor**
 - 5.3.1. Independence, Impartiality and Immunity
 - 5.3.2. Confidentiality
 - 5.3.3. Competence and Diligence
 - 5.3.4. Loyalty and Avoidance of Conflict of Interest
- 5.4. **In Relation to the Accused, the Court and Other Institutions**
- 5.5. **Engaging in Activities Outside Official Duties**
- 5.6. **Other Ethical Considerations**
- 5.7. **Liability for Violation of Codes of Conduct for Prosecutors**
 - 5.7.1. Administrative (Disciplinary) Liabilities
 - 5.7.2. Criminal Liabilities
 - 5.7.3. Civil Liabilities

CHAPTER FIVE

ETHICS OF THE PUBLIC

PROSECUTOR . . . Continued

5.1. The Concept of Prosecution

- Black's Law Dic: prosecution.
 - 1. The commencement and carrying out of any action or scheme
 - 2. A criminal proceeding in which an accused person is tried [criminal prosecution]
- Until the 19th century, victims often had the burden of directly prosecuting criminals who had harmed them. With the rise of public-prosecution services, the need for private prosecutions declined. Though uncommon, they are still sometimes permitted in England. [Cases: Criminal Law, 1704.] as cited in Black's Law Dictionary
- Prosecutor-
 - 1. A legal officer who represents the state or federal government in criminal proceedings (public prosecutor)
 - A private person who institutes and carries on a legal action, esp. a criminal action (private prosecutor)

CHAPTER FIVE

ETHICS OF THE PUBLIC PROSECUTOR . . .

Continued

5.2. Eligibility

- Persons selected as prosecutors shall be individuals of integrity and ability, with appropriate training and qualifications. [Art 1 of UN Guidelines on the Role of Prosecutors, 1990]
- Art 44 of Regulation No. 44/98 states the following criteria to be appointed as prosecutor:
 - Age [18 and above] and Nationality,
 - [loyalty to the FDRE Constitution?](#)
 - knowledge in the field of law, and
 - personal behavior.
- Prosecutors are appointed by the Minister of Justice, how do you see this?

CHAPTER FIVE

ETHICS OF THE PUBLIC PROSECUTOR . . .

Continued

5.3. Ethical Principles for the Functions of Public Prosecutor

5.3.1. Independence of Public Prosecutor

- Do you think independence is important for the public prosecutor to properly discharge her duties?
- Art 25 of FDRE Constitution says “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.”
- Independent and impartial prosecutorial authority is necessary for the effective maintenance of the rule of law and human rights protection.
- Prosecutors shall carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination [Art 13(a) of UN Guidelines on the Role of Prosecutors, 1990]

CHAPTER FIVE

ETHICS OF THE PUBLIC PROSECUTOR . . .

Continued

5.3. Ethical Principles for the Functions of Public Prosecutor

5.3.1. Independence of Public Prosecutor . . . continued

- In their activities, public prosecutors shall be independent from any influence by any other institution or official of neither legislative nor executive branch and shall obey to laws only.
- How practical is this?
- But we don't find specific provision of prosecutor's professional independence; we drive it from the nature of the profession
- On the other hand, the Prosecutors regulation says:
 - A prosecutor shall obey the orders of his superior unless it is clearly contrary to the law. In all cases the superior is responsible for the legality of his orders. [Art 63(2) of Regulation No. 44/98]
- Is there any contradiction with prosecutorial independence?

CHAPTER FIVE

ETHICS OF THE PUBLIC PROSECUTOR . . .

Continued

5.3. Ethical Principles for the Functions of Public Prosecutor

5.3.2. Immunity of Public Prosecutors

- States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability. [Art 4 of UN Guidelines on the Role of Prosecutors, 1990]
- Is there any legal immunity prosecutors in Ethiopia?
- There is no any specific provision on this matter.

CHAPTER FIVE
ETHICS OF THE PUBLIC PROSECUTOR . . .
Continued

**5.3. Ethical Principles for the Functions of
Public Prosecutor**

5.3.3. Confidentiality

- The public prosecutor should respect the principle of confidentiality of information he/she has acquired during the performance of his/her official duties except for legal reason.
 - According to Art 65 of Reg. No 44/98 a Prosecutor is obliged:
 - not disclose to any person any information gained in the course of his official duties or otherwise except to the extent that such disclosure is necessary for the discharge of his lawful duty, unless such information is of minor importance or is a public knowledge.
- Confidentiality**
- may not disclose in the discharge of his duties or otherwise, information, proceedings, plans or similar

CHAPTER FIVE

ETHICS OF THE PUBLIC

PROSECUTOR . . . Continued

5.3. Ethical Principles for the Functions of Public Prosecutor

5.3.3 Competence and Diligence

- Public prosecutor should be competent and diligent enough to properly discharge prosecutorial functions
- Competence refers to knowledge and skill and diligence refers to carefulness and promptness
- Any prosecutor shall perform his duties to his best knowledge and ability. He is required to discharge the usual duties and other related duties of the grade and the position to which he has been appointed and other related duties. [Art 63(1) of Reg. No 44/98]

CHAPTER FIVE

ETHICS OF THE PUBLIC PROSECUTOR . . .

Continued

5.3. Ethical Principles for the Functions of Public Prosecutor

5.3.4. Conflict of Interest

- Needles to say, a prosecutor has private life, and conflict of interest may arise between his private life and prosecutorial responsibility.
- The public prosecutor should decline from treating a matter when he/she knows there is conflict of interest.
- Conflict of Duty and Private Interest [Art 68 of Reg. No 44/98]:
 - 1) Any prosecutor shall forthwith report to his superior a case in which his interest or his relative's or friend's interests conflict with his duties and shall request that the case be handled by another prosecutor.
 - 2) The superior shall give the necessary decision.

CHAPTER FIVE

ETHICS OF THE PUBLIC PROSECUTOR . . .

Continued

5.4. Relations with the Accused and other Organs

- Achievement of justice is the effect of the cumulative effort of all branches of government.
- Of course this may be abused?

5.4.1. Public Prosecutor's Relation with the Accused

- The Public Prosecutor should respect and enforce the constitutional and procedural rights of accused persons during investigation and prosecution [Art 13(1) of FDRE Constitution]
- The public prosecutor should avoid prejudice against the person prosecuted. There is no situation of enmity between the accused and the public prosecutor.
- Is getting witnesses rehearse what they say at the police by the prosecutor proper?
- Do you think a prosecutor who realized his evidence doesn't prove the guilt of an accused should suggest acquittal?

CHAPTER FIVE

ETHICS OF THE PUBLIC PROSECUTOR . . .

Continued

5.4. Relations with the Accused and other Organs

5.4.2. Public Prosecutor's Relation with the Court

- The public prosecutor should be exemplary in respecting judicial independence
- The public prosecutor should refrain from behaving and doing acts that encroach in the independence of judges
- Eg one woman prosecutor bit a woman judge for acquittal

5.4.3. Public Prosecutor's Relation with the Police

- The police and the public prosecutor should work hand in hand for the maintenance of peace and order
- the public prosecutor is under duty to supervise police judicial activities
- Supervising police activity vs. respecting police authority

CHAPTER FIVE

ETHICS OF THE PUBLIC PROSECUTOR . . .

Continued

5.4.4. Public Prosecutor's Relation with Superiors

- Independence vs. Obedience
- Should the prosecutor obey superior orders?
Independence?
 - A prosecutor **shall obey** the orders of his superior **unless it is clearly contrary to the law**. In all cases the superior is responsible for the legality of his orders. [Art 63(2) of Reg. No 44/98]

5.4.5. Public Prosecutor's Relation with the Public

- The public prosecutor should always exhibit good behavior and conduct in the public to win the confidence of the public
 - Borrowing money- extent? loaners? [Art 66 of Reg. No 44/98]
 - Gifts- [Art 67 of Reg. No 44/98]
 - soliciting or taking remuneration or consideration
 - In whatever form from any person
 - in relation to a service rendered or to be rendered in the future.

CHAPTER FIVE
ETHICS OF THE PUBLIC PROSECUTOR . . . Continued

5.5. Engaging in Activities Outside Official Duties

- The public prosecutor :
 - Shall devote his full energy and attention to his career;
 - May work for other public institutions with permit;
 - Shall not undertake any activity that may impair his proper service or that may conflict with his duty as prosecutor. [Art 71 of Reg. No 44/98]

5.6. Other Ethical Considerations

- Can the prosecutor be a member of political party?

CHAPTER FIVE

ETHICS OF THE PUBLIC PROSECUTOR . . .

Continued

5.7. Liability for Breach of Code of Conduct

- Needless to say, breach of code conduct entails accountability for prosecutors
- Types of liability: administrative, criminal or civil

5.7.1 Administrative (Disciplinary) Liabilities

- Procedure for Administrative liability has been provided under Art 81-87 of Reg. No 44/98
- The power to hear disciplinary cases of prosecutors is vested with the Disciplinary Commission
- Penalties:
 - simple penalty- warning, fine of $<$ or $=$ one month salary, prohibiting increment
 - Serious- demotion or dismissal
- Right to appeal to the Minister Art 85 of Reg. No 44/98

CHAPTER FIVE
ETHICS OF THE PUBLIC PROSECUTOR . . .
Continued

5.7.2. Criminal Liability

- Criminal liability may entail as an official or as a person

5.7.3. Civil Liability

- Does a prosecutor has tortuous liability for professional misconduct?

End of the Whole
Class