

UNIT – V

Misconduct, discipline and the fifty opinions

s.35 · Procedure · Cases · Opinions

Explanatory Lecture Slides

Professional Ethics and Professional Accounting System · Clinical-I · Semester VII

PROFESSIONAL ETHICS & PROFESSIONAL ACCOUNTING SYSTEM

Topics covered in this unit

01

Define professional misconduct

02

Map s.35–44 procedure

03

Place ten Supreme Court holdings a viva will ask

04

Use the fifty selected opinions the BCI syllabus names

05

Note contempt overlapping with misconduct

06

Close as an officer of the court

How this unit is organised

01

What is misconduct

02

s.35 procedure

03

Leading holdings

04

Fifty opinions

05

Overlap with
contempt

06

Officer of the court

What is misconduct

s.35: 'professional or other misconduct'. Other = moral turpitude off the file (a crime of dishonesty). Professional = on the file (lying to the court, stealing a client, touting, collusion).

- Dabholkar: a wide, functional idea — anything that makes the person unfit to be on the roll. Not every incivility; not nothing either.
- A 16-mark: definition, two illustrations of professional, one of 'other', one case.

What is misconduct

PROFESSIONAL

- Mis-citation knowing.
- Siphoning.
- Touting.
- Conflict.

OTHER

- A conviction that wrecks trust.

Procedure — ss.35–44

Complaint / suo motu → State Bar Council disciplinary committee (s.35) → order (reprimand, suspend, remove) → appeal to BCI (s.37) → appeal to SC (s.38). s.36 BCI's own discipline of its members / transferred matters. s.42 powers of a civil court. Limitation / laches as fairness.

- Natural justice: notice, charge, evidence, a speaking order. A 10-mark of the ladder, not a CPC essay.
- Stay of a suspension is not a right; a dishonest stay-application is more misconduct.

Procedure — ss.35–44

FIRST FORUM

- State Bar Council DC.

THEN

- BCI.
- Supreme Court under s.38.

Holdings a viva actually asks

V.C. Rangadurai (trust); R.D. Saxena (no lien); Harish Uppal (strike); A.S. Mohammed Rafi (the hated client); P.D. Gupta (dealing in the subject-matter); D.P. Chadha (delay as a tactic); J.S. Jadhav (fabricated appearance); In re Vinay Chandra Mishra (contempt and the bar — read with SCBA); Shambhu Ram Yadav (bribing a claim-committee); N.G. Dastane v Shrikant S. Shivde (asking humiliating questions of a complainant).

- Ten names, one line each, is a first-class last-page. Do not fake a citation you have not seen.

Holdings a viva actually asks

FILE AND FEE

- Saxena.
- Rangadurai.
- P.D. Gupta.

COURT AND PUBLIC

- Uppal.
- Rafi.
- Dastane.
- Chadha.

Fifty selected opinions of the Disciplinary Committees

The BCI syllabus still points at a digest of DC opinions: touting, advertising, dual employment, a lawyer-witness, withdrawing without leave, communicating with the other client, a scandalising press note, a forged vakalat, undercutting, a clerk who touts in your name.

- A 10-mark: three opinions in three sentences each, with the holding (not the gossip). The point of the digest is pattern-recognition, not a memory dump of fifty captions.

Fifty selected opinions of the Disciplinary Committees

RECURRING SINS

- Tout.
- Forge.
- Dual brief in conflict.
- Press interview on a live file.

USE

- Name the sin, the duty-rule, the order (reprimand / suspend).

Overlap with contempt

The same act can be contempt (the court punishes to protect the stream) and misconduct (the Council punishes to protect the roll). SCBA: do not mix the punishments. A court may refer to the Council.

- Vinay Chandra Mishra is the cautionary tale of a court that went too far into the Council's kitchen; SCBA walked it back on the punishment menu.

Overlap with contempt

COURT

- Contempt Act menu.

COUNCIL

- s.35 menu.
- The roll.

Officer of the court — close

Enrollment is a public trust. The seven lamps, the 1971 Act, the books, the Welfare Fund, the s.35 ladder — one profession. A last-line you can say in a viva without sweating: 'I am paid by a client and sworn to a court, and when those two pull, the court wins on fact and law, and the client still gets a fearless private ear.'

- That sentence is the course.

Officer of the court — close

WHEN THEY PULL

- Never mislead the bench.
- Never abandon the client in the corridor.

THE ROLL

- A public list, not a trade licence only.

Fifty selected opinions of the Disciplinary Committees

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Cases a KSLU answer should name

CASE

Bar Council of Maharashtra v M.V. Dabholkar

(1975) 2 SCC 702

Misconduct is functional unfitness, not a closed list of sins.

CASE

In Re Vinay Chandra Mishra

(1995) 2 SCC 584

Read with SCBA 1998 — contempt and the roll are different kitchens.

CASE

N.G. Dastane v Shrikant S. Shivde

(2001) 6 SCC 135

Humiliating a complainant in cross is not 'duty to the client'.

Provisions & materials to quote

Advocates Act ss.35–38

Discipline, appeal, powers, stay.

s.49 + BCI conduct rul

The code the DC applies.

Contempt of Courts Act

The other kitchen.

BSA ss.132–134

Privilege — a defence, not a cloak.

Art. 19(1)(g) / 19(6)

The profession, still a public one.

10 / 16-mark frames from this unit

Q1

Define professional misconduct. Illustrate from decided cases.

Q2

Explain the procedure for disciplining an advocate under the Advocates Act.

Q3

Write notes on any three of: R.D. Saxena; Harish Uppal; Mohammed Rafi; Dastane; P.D. Gupta.

Q4

How do contempt jurisdiction and Bar-Council discipline differ?

Unit recap

- 1 Misconduct = unfitness on or off the file (s.35).
- 2 Ladder: State DC → BCI → SC (s.38).
- 3 Ten case-names, one line each, beat a page of adjectives.
- 4 Contempt punishes for the stream; the Council for the roll.
- 5 When client and court pull, the court wins on the record; the client still gets a private, fearless ear.