

Sixth Semester

Contemporary Auditing

Module 5

Professional Ethics and Misconduct

Meaning and Definitions

Ethics may be defined as “the normative science (standards) of the conduct of human beings living in societies – a science which judges this conduct to be right or wrong, to be good or bad...”¹ Every profession, whether highly-sophisticated or less-sophisticated, has certain norms that are expected to be followed by a practitioner. These norms and principles act as 'religion' in a profession.

A physician or a lawyer is expected to maintain secrecy of information about his patient or client and offer honest counseling and advice. A professional in education is expected to be a learner and communicator of knowledge and truth. All human professional actions are either good or not good as such, irrespective of their outcome. Good, evil, right, wrong and other values in the east and the west are considered situational, temporal and ever evolving. More often than not, professionals in a corporate environment face such dilemmas. Professional ethics examines the moral & ethical issues that arise in a corporate environment. It has been found that a majority of professionals face ethical problems in their professional life, as compared to non-professionals, mainly because professionals are trained to provide services to the society that cannot be provided by non-professionals. It is because of the services that professionals provide, they are also eligible for certain privileges and immunities. For example, a doctor is given the right to cut open a patient's body because he trained to cure him of his illness and is offered immunity from any negative repercussions if something unfortunate were to happen. Similarly, a police officer is given the right of carrying weapons and he can use them to protect themselves or somebody else's life from imminent danger. Not everybody can operate upon someone and not everyone can protect you from the unsocial elements of the society. Because of these added responsibilities and complicated scenarios, it's difficult to understand the way a person is expected to act under complex situations. Professional Ethics is a way to provide an answer to those difficult questions through extensive training, sharing real-life examples, & following the practices that makes a profession ethical.

2 CONCEPT & DEFINITION OF PROFESSIONAL ETHICS Professional ethics are professionally accepted standards of personal and business behavior, values and guiding

principles. They are codes of professional ethics are often established by professional organizations to help guide members in performing their job functions according to sound and consistent ethical principles. Professional Ethics is defined as the personal and corporate rules that govern behavior within the context of a particular profession. An example of professional ethics is the American Bar Association's set of ethical rules that govern an attorney's moral obligations.

3 DO WE NEED PROFESSIONAL-ETHICS? Good Ethics is a fundamental requirement of any profession. It is integral to the success of the business as well. Ethics is a system of moral principles governing the appropriate conduct of a person or a group. Maintaining good ethics is being consistent with the principles of correct moral conduct constantly. It is integral to the success of the business as well. Ethics is a system of moral principles governing the appropriate conduct of a person or a group. Maintaining good ethics is being consistent with the principles of correct moral conduct constantly. “Good ethics is good business.”, as it not leads to run the business successfully, but it also provides many ways for growth and development by leaving a good impression about an organization in the market. An organization strives continually to be in pursuit of its goals while benefiting the employees in building up their high competencies. In this direction, the adherence to high ethical standards of the employees can be very much contributory to the impressive achievements of business goals being turned out as planned and intended. Ethics refers to human conduct as to make judgements between what is right and what is wrong. It could be that there are several factors that may encourage one to adopt unethical behaviour, but the right person is he who, despite facing ethical dilemmas, assesses the situations and makes differentiation between what is morally good and bad in order to follow the rules and code of professional conduct.

Meaning of Professional Misconduct

Misconduct is the antonyms of conduct. Conduct means behavior with good manners and treatment shown towards others . Misconduct represents misbehavior. Misconduct as explained in the Dictionary is 'improper conduct'. The term 'misconduct' has been defined in Black's Dictionary as 'a transgression of some established and defined rule of action, a forbidden act , a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior'. Its

synonyms are misdemeanor, impropriety, mismanagement, offence, but not negligence or carelessness.

In **State of Panjab V. Ram Singh (AIR 1992, SC 2188)** the Supreme Court held that the term may involve moral turpitude,

An advocate is bound to conduct himself in a manner befitting the high and honorable legal profession. The legal profession is a noble profession having high traditions. An advocate is expected to uphold those traditions. He must comply with the conduct of professional ethics and etiquette as laid down by bar council of India.

Generally speaking Professional Misconduct is the behavior outside the bounds of what is considered acceptable or worthy of its membership by the governing body of a profession. With relation to the Legal Professional it refers to disgraceful

Disciplinary Directorate

1. The Council shall, by notification establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it.
2. On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a prima facie opinion on the occurrence of the alleged misconduct.
3. Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule* , he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule** or in both the Schedules, he shall place the matter before the Disciplinary Committee.

4. In order to make investigations under the provisions of this Act, the Disciplinary Directorate shall follow such procedure as may be specified.

Board of Discipline

1. The Council shall constitute a Board of Discipline consisting of—
 - a) a person with experience in law and having knowledge of disciplinary matters and the profession, to be its presiding officer;
 - b) two members one of whom shall be a member of the Council elected by the Council and the other member shall be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy;
 - c) The Director (Discipline) shall function as the Secretary of the Board.
2. The Board of Discipline shall follow summary disposal procedure in dealing with all cases before it.
3. Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may 43 thereafter take any one or more of the following actions, namely :—
 - a) reprimand the member;
 - b) remove the name of the member from the Register up to a period of three months;
 - c) impose such fine as it may think fit which may extend to rupees one lakh.
4. The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no prima facie case and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter.

Disciplinary Committee

1. The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence

having experience in the field of law, economics, business, finance or accountancy: Provided that the Council may constitute more Disciplinary Committees as and when it considers necessary. 44

2. The Disciplinary Committee, while considering the cases placed before it shall follow such procedure as may be specified .
3. Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule* and the Second Schedule**, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely :—
 - a. reprimand the member;
 - b. remove the name of the member from the Register permanently or for such period, as it thinks fit;
 - c. impose such fine as it may think fit, which may extend to rupees five lakhs.
4. The allowances payable to the members nominated by the Central Government shall be such as may be specified. 21C. Authority, Disciplinary Committee, Board of Discipline and Director (Discipline) to have powers of civil court For the purposes of an inquiry under the provisions of this Act, the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, in respect of the following matters, namely
 - a. summoning and enforcing the attendance of any person and examining him on oath;
 - b. the discovery and production of any document; and
 - d. receiving evidence on affidavit. Explanation – For the purposes of Sections 21, 21A, 21B, 21C and 22, “member of the Institute” includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.