Page 1720 - 1745 **DOI:** https://doij.org/10.10000/IJLMH.113965

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 6

2022

© 2022 International Journal of Law Management & Humanities

Follow this and additional works at: https://www.ijlmh.com/
Under the aegis of VidhiAagaz – Inking Your Brain (https://www.vidhiaagaz.com/)

This article is brought to you for "free" and "open access" by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact **Gyan@vidhiaagaz.com**.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to **submission@ijlmh.com.**

Professional Conduct Rules and Case Laws on Conflict of Interest, Confidentiality of Communication and Privileged Communication

LATIKA CHOUDHARY[1]

ABSTRACT

John Stuart Blackie says;

"A man may be as brilliant, as clever, as strong and as broad as you please and with all these, if he is not good, he may be a paltry fellow and even the sublime which he seeks to reach in his most splendid achievements is only a brilliant sort of badness. One thing is needful; money is not needful; power is not needful; even health is not needful, but character alone – a thoroughly cultivated will – is that which can truly save us."

Character is vital in all professions and walks of life, and in the legal profession particularly, the maintenance of the honesty of the lawyer is a matter of the first importance. The most worthy and effective advertisement possible for a young lawyer, especially with his brother's lawyers, is the establishment of a well-merited reputation for professional capacity and fidelity to trust. To me, an advocate without character is like a ship without a rudder. As Lord Jeffrey puts it, "A good name, like good will, is got by many actions and lost by one." Also, as said by Mahatma Gandhi, "A 'No' uttered from deepest conviction is better and greater than a 'Yes' merely uttered to please, or what is worse, to avoid trouble." Hence, character is the essential component of ethics and is something which every advocate must develop and exercise in their daily lifestyle. As Judge Donovan points out, "the foundation of a lawyer's fortune is character… .....out of sight, yet never out of mind and never out of hearing……character grows from every transaction, little & large."

Keywords: *Professional ethics, Misconduct, Communication, Privileged Communication.*

I. INTRODUCTION

The term Ethics, is something, which all of us inherently possess. We can refer to it using different terminologies, but it is primarily two things. First, ethics refers to well-founded standards of right and wrong that prescribe what humans ought to do, usually in terms of rights, obligations, benefits to society, fairness, or specific virtues. For example, it refers to those

[1] Author is an Assistant Professor at University of Petroleum and Energy Studies, Dehradun, India.

© 2022. International Journal of Law Management & Humanities

standards that impose the reasonable obligations to refrain from rape, stealing, murder, assault, slander, and fraud. It also includes those that enjoin virtues of honesty, compassion, and loyalty. It comprises of standards relating to rights, such as the right to life, the right to freedom from injury, and the right to privacy. Such standards are adequate standards of ethics because they are supported by consistent and well-founded reasons.

Secondly, ethics refers to the study and development of one's ethical standards. As mentioned above, feelings, laws, and social norms can deviate from what is ethical. So it is necessary to constantly examine one's standards to ensure that they are reasonable and well-founded. Ethics also means, then, the continuous effort of studying our own moral beliefs and our moral conduct, and striving to ensure that we, and the institutions we help to shape, live up to standards that are reasonable and solidly-based.

When standards of professional conduct are applicable to members of the legal profession, we call them Legal Ethics. In the words of *Chief Justice Marshall*[2]- *"The fundamental aim of legal ethics is to maintain honor and dignity of the Law profession, to secure a spirit of friendly cooperation between the Bench and the Bar in the promotion of higher standards of justice, to establish honorable and fair dealings with the counsel, with his clients, opponent and witnesses".*

In the course of this paper, we shall be examining the professional ethics and duties that arise in the legal field with respect to conflicts of interest, confidentiality of communication and privileged communication.

II. Advocates' duty towards his clients

An advocate owes a duty to his client in several ways:

- He must give a patient hearing to the client.
- He must examine all his papers.
- He must after discussing the case with his client, advice him correctly, even if it be that the advice is not palatable to the client.
- He should account for the clients' money strictly and return the unspent amount to him.
- He must represent his client in court with undivided fidelity and not divulge his secrets or confidences.

[2] 4th Chief Justice of the Supreme Court of the United States

© 2022. International Journal of Law Management & Humanities

- He should not appear for two clients whose interest's conflict.
- He should not in any way encourage an illegal transaction.
- When a settlement of pending suit or appeal is proposed, he should give his honest opinion according to the best of his ability and leave it to the client to follow it or not. An advocate should be vigilant to discover chances of compromising controversies. But he should not pressurize the client in that behalf. But where the client stands a great risk, inspite of advice, still desires to fight the case to finish, according to me, it is the duty of the advocate to fight it for him and to use every legitimate argument to bring about success.

Besides this, according to me, a client is also entitled to say to his counsel; *"I want your advocacy and not your judgement."* In fact *Lord Atken* says that, *"an advocate may urge freely a view with which he does not himself concur, for it often happens that the opinion of the judge differs from our own. An argument that may not convince us may convince the judge before whom we urge it; and after all, it is his business to judge."*

While discussing the relationship between an Advocate and a client, the Supreme Court in *State of U.P. v. U.P. State Law officers' Association,*[3] very categorically, sums up the relationship as follows;

"The relationship between the lawyer and his client is one of trust and confidence. The client engages the lawyer for personal reasons and is at liberty to leave him also, for the same reasons. He is under no obligation to give reasons for withdrawing his brief from his lawyer. The lawyer in turn is not an agent of his client but his dignified, responsible spokesman. He is not bound to tell the court every fact or urge every proposition of law, which his client wants him to, however irrelevant they may be. He is essentially an adviser to his client and is rightly called a counsel in some jurisdictions. Once acquainted with the facts of the case, it is the lawyer's discretion to choose the facts and the points of law which he would advance. Being a responsible officer of the court and an important adjunct of the administration of justice, the lawyer also owes a duty to the court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client. This relationship between the lawyer and the private client is equally valid between him and the public bodies."

III. Situation of Conflict

A conflict may arise with regard to a current client if another person with competing interests

[3] *AIR 1994 SC 1654: 1994(2) SCC 204*

© 2022. International Journal of Law Management & Humanities

in the same case or a related case approaches the advocate for representation. A related issue to properly identifying the client is knowing when the representation is over. Even a client who has not had a need for a lawyer's services in some time may nevertheless consider herself a current client.[4] Conflict rules are stricter for current clients than they are for successive clients, and apply in more situations.

Even when the lawyer-client relationship has terminated, either through the end of litigation or because the advocate is no longer working with the firm through which he met and worked with the client, a new client may have competing interests, or even be the defendant in the litigation in which the advocate had earlier represented the plaintiff. The conflict limitations with regard to former clients generally apply when a lawyer undertakes a representation adverse to a former client when the matter involved in the prior representation is the same or substantially related to the new matter. Lawyers are not barred absolutely or in perpetuity from representing interests adverse to those of their former clients.[5]

A conflict can also arise when a lawyer has declined to act for a party. It may be that after interviewing a potential client, an advocate decides that he will not represent them. While deciding about this, he should take care that he does not receive any confidential information. Receiving confidential information can create obligations of confidentiality even if no lawyer-client relationship ultimately ensues; which in turn can prevent a lawyer from acting either for a new client or even for a current client at some point in the future.[6] This often happens in family law matters, where parties attempt to 'disqualify' certain experienced lawyers from representing the opposite side by disclosing information that creates a conflict of interest, even when they do not wish to engage the services of these lawyers themselves. In this digital age, e-mail is increasingly being used to transmit confidential information to unsuspecting lawyers, who, if they do not post prior no-confidentiality notices on their websites etc., are thereafter precluded from representing any party with competing interests.[7]

---

[4] S. Stevens, "Conflicts of Interest, Part I" 70 Oregon State Bar Bulletin 9 (Oct. 2009) at 9. - See more at: http://legalsutra.com/1498/conflicts-between-the-interests-of-two-clients-and-the-lawyer%e2%80%99s-duty/#sthash.I7QRNtuO.dpuf

[5] S. Stevens, "Conflicts of Interest, Part II – Former Client Conflicts" 70 Oregon State Bar Bulletin 9 (Dec. 2009) at 9. - See more at: http://legalsutra.com/1498/conflicts-between-the-interests-of-two-clients-and-the-lawyer%e2%80%99s-duty/#sthash.I7QRNtuO.dpuf

[6] Lawyer's Professional Indemnity Company, Managing Conflict of Interest Situations (available at www.practicepro.ca/practice/pdf/conflict.pdf) (1998) at 6. - See more at: http://legalsutra.com/1498/conflicts-between-the-interests-of-two-clients-and-the-lawyer%e2%80%99s-duty/#sthash.I7QRNtuO.dpuf

[7] Canadian Bar Association Task Force on Conflicts of Interests, Conflicts of Interest Toolkit (available at www.cba.org/CBA/groups/doc/conflicts_toolkit.doc) (Aug. 2008) at 8-10. - See more at: http://legalsutra.com/1498/conflicts-between-the-interests-of-two-clients-and-the-lawyer%e2%80%99s-duty/#sthash.I7QRNtuO.dpuf

An advocate has a duty not to accept any engagement in a trial in which he may have to give testimony, although there is no rule of evidence disqualifying counsel from giving evidence in a suit in which he is engaged. An advocate is not entitled to act in a professional capacity as well as a constituted attorney of a party in the same matter or cause. If a person appoints a firm of lawyers as his advocates, none of the partners of the lawyers' firm can act as recognized agents in pursuance of a power of attorney concerning the same cause.[8]

An advocate who has at any time advised a party in connection with the institution of a suit, appeal or other matter or has drawn pleadings or acted for a party, must not act, appear or plead for the opposite party, unless the express consent given of all concerned is obtained, after full disclosure of facts. Thus, the only exception to the ethical ineligibility of a lawyer to represent clients due to conflicts of interest is created when the client(s) himself/themselves grant their express consent to their continued representation by the concerned advocate. However, the client must necessarily be informed of all aspects of the conflict that can be disclosed without breaching confidentiality requirements.If the advocate holds anything back, he may be liable for malpractice.

In most cases of a conflict of interest, the advocate must inform the client that he is unable to take up hid brief, and recommend that he approach another advocate. However, in situations where an advocate fails to notice a potential conflict of interest, and accepts the brief, or continues to represent both clients, a malpractice suit could lie and the court will place the burden of proof to prove that there was no likelihood at all that representing one client would adversely affect the interests of the other squarely upon the advocate. This creates a problematic situation for the advocate, as he is very rarely able to satisfy the burden.

The consequences of a conflict of interest situation for the lawyer can be severe and costly. For example, acting with a conflict of interest can result in civil liability for professional malpractice as well as disciplinary action. Some very serious consequences also flow from a proven claim in contract, tort or equity, including:

- disqualification from representation of one or more clients;
- forfeiture of fees charged; the inability to charge for work in progress and other time invested;

---

[8] A. Malhi, "Conflict between Interest and Duties of a Lawyer" (available at www.legalserviceindia.com/article/details.asp?id=241) (Sep. 2008). - See more at: http://legalsutra.com/1498/conflicts-between-the-interests-of-two-clients-and-the-lawyer%e2%80%99s-duty/#sthash.I7QRNtuO.dpuf

© 2022. International Journal of Law Management & Humanities

- embarrassment, inconvenience and aggravation of defending a malpractice claim or investigation;
- lost time spent on defending a malpractice claim or investigation.

IV. Regulations Governing Conflicts of Interest in India and Other Countries

(A) India

In India, the legislation that confers rights and places restrictions on advocates is the Advocates Act 1961. S. 30 of the Act confers upon advocates who are enrolled in the State Bar the right to practise the profession of law throughout the territories to which the Act extends. Thus, there is no absolute right to practise; rather, it is a statutory right. 'Practise' includes acting for a client in court, i.e. filing pleadings, arguing before the judge, etc. The secondary regulations which lay out the guidelines for conduct by advocates are the Bar Council of India Rules, Part VI of which, in Chapter II, deals with the duties of an advocate. Section II of the Chapter deals specifically with the advocate's duties towards clients. Rules 13 and 33 of the Chapter are the only ones which deal with issues regarding conflict of interest situations; however, they are not very detailed. Rule 13 directs an advocate who believes he may be a witness in his client's case to withdraw from representing his client, while Rule 33 directs an advocate who has advised or appeared for a client in a proceeding not to act, plead or appear for the opposite party. There is no mention of former clients, future clients, concurrent conflicts of interest in separate proceedings, or client consent. There are no other parameters which govern the treatment of conflicts of interest by an advocate.

Case law on the point does not shed much light on the law on this issue, either, although it appears to be well-accepted that acting for parties with conflicts of interest is considered professional malpractice. In *Chandra Shekhar Soni* v. *Bar Council of Rajasthan and Ors.*[9]an advocate who was representing one party in a criminal case switched sides and began representing the opposite party. It was held by the Supreme Court that "…it is not in accordance with professional etiquette for an advocate while retained by one party to accept the brief of the other. It is unprofessional to represent conflicting interests except by express consent given by all concerned after a full disclosure of the facts…. Counsel's paramount duty is to the client, and where he finds that there is conflict of interests, he should refrain from doing anything which would harm any interests of his client. A lawyer when entrusted with a brief is expected

[9] AIR 1983 SC 1012.

to follow the norms of professional ethics and try to protect the interests of his client in relation to whom he occupies a position of trust." The Supreme Court upheld his being found guilty of malpractice by the Bar Council of India in disciplinary proceedings, and he was suspended from practise for the period of one year.

(B) Common Law and English Law

In the UK, there are two regulations that govern the conduct of barristers and solicitors. The first is the Code of Conduct framed by the Bar of England & Wales, and the second is the Solicitors' Code of Conduct 2007, framed by the Solicitors Regulation Authority. The former contains numerous references to issues relating to conflicts of interest in Part VI of the Code, under paragraph 603, parts (d) and (e), which are provisions similar to Rules 13 and 33 of the Indian Bar Council Rules. They are both similarly worded and similarly brief, providing little by way of detailed instruction. The latter, however, contains an extremely detailed provision, S.3, which deals exclusively with conflicts of interest, including different kinds of conflicts that may arise (at various stages of practice), the duty *not* to act, exceptions to this duty, and courses of action to be taken in certain high-risk conflict of interest situations. S. 4 deals with confidentiality, covering even situations of conflicts with regard to confidentiality, setting out conditions under which clients with conflicting interests may consent to the transfer of confidential information (say, when a client is suing a former client and the lawyer is in possession of useful confidential information). The Code of Conduct is a mandatory code, making it compulsory for solicitors to follow the procedures prescribed therein.

Additionally, English common law, unlike Indian case law, is a rich repository of the law on the treatment of conflict of interest situations by lawyers. In *Moody* v. *Cox*,[10] the plaintiff contracted to purchase from H. and C., who were trustees, a portion of their trust property. H. was a solicitor and C. was his managing clerk. Throughout the transaction H. acted (through C.) as solicitor both for vendors and purchaser. C. failed to disclose to the plaintiff certain valuations previously obtained showing that the property was not worth the price which the plaintiff agreed to pay. The plaintiff knew that the vendors were trustees. In the course of the negotiations the plaintiff offered and C. accepted a bribe. In an action by the plaintiff for rescission of the contract the defendants counterclaimed for specific performance.

The Court of Appeal held that H., as the plaintiff's solicitor, was bound to disclose to him all material facts relating to the matter, and that he was not relieved of that obligation by the fact that he owed a conflicting duty to his trust. By the claim for specific performance, the contract,

[10] [1917] 2 Ch. 71.

which might have been repudiated on the ground of the bribe, was affirmed, and it was held that the plaintiff was not therefore deprived of his equitable right to rescission on the independent ground of the non-disclosure by his solicitor of material facts.

In *Holborow* v. *Macdonald Rudder*,[11] it was observed that "…if there are circumstances which are likely to imperil the discharge of [the] duties to a court by a [lawyer] acting in a cause, whether because of some prior association with one or more of the parties against whom the lawyer is then to act, or because of some conduct by the lawyer, whether arising from associations with the client or a close interest which gives rise to the fair and reasonable perception that the lawyer may not exercise the necessary independent judgment, a court may conclude that the lawyer should be restrained from acting …"[26] Thus, it is plain that there are clear standards which the courts use to test a lawyer's ability to objectively represent clients with conflicting interests, and to therefore decide on whether the lawyer was being unethical in continuing to represent them.

By contrast, in *Clark Boyce* v. *Mouat*,[12] a solicitor acted for a mother and son in a situation where the son took a loan with the mother providing the security for the same. The son was advised to seek independent legal representation, but he refused to, with a complete understanding of the legal consequences, and with the mother's consent. At a later stage, the son's business failed, and the mother was held liable for the loan amount. She then sued the solicitor, alleging malpractice because he acted for both parties where it was not appropriate. However, the court held that there was no general rule of law that a solicitor should never act for both parties where their interests might conflict; rather, a solicitor might so act provided the informed consent of both parties was obtained. Whether informed consent had been given depended on the facts of the case, and on these facts it was held that the solicitor had carried out his duties properly and done all that was reasonably required.

V. Bar Council Rules on Ethical Standards in Conflict of Interest

This Code provides a general guide for ethical standards to be adhered to by members of the Bar whether practicing individually or as a law firm and whether engaged in litigation or transactional / corporate work. The expression "advocate" in these rules / Code of Conduct shall include to the extent practicable, any lawyer or group of lawyers practising as part of a law firm and the law firm itself.

1. An advocate shall not ordinarily withdraw from engagements, once accepted,

[11] [2002] WASC 265 at 272.
[12] [1993] 4 All E.R. 268.

without sufficient cause and unless reasonable and sufficient notice is given to the client. Upon his/her withdrawal from a case, he/she shall refund such part of the fee as has not been earned.

2. An advocate shall not, at any time, be a party to fomenting of litigation.
3. An advocate shall not act on the instructions of any person other than his/her client or his/her authorised agent.
4. An advocate who has, at any time, advised in connection with the institution of a suit, appeal or other matter or has drawn, or advised on, pleadings, or acted for a party, shall not act, appear or plead for the opposite party.
5. An advocate should not accept a brief or appear in a case in which he/she has reason to believe that he/she will be a witness, and if being engaged in a case, it becomes apparent that he/she is a witness on a material question of fact, he/she should not continue to appear as an Advocate if he/she can retire without jeopardising his/her client's interests.
6. An advocate shall at the commencement of his/her engagement and during the continuance thereof, make all such full and frank disclosure to his/her client relating to his/her connection with the parties and any interest in or about the controversy as are likely to affect his/her client's judgment in either engaging him or continuing the engagement.
7. An advocate shall not advise or represent both sides of a dispute and, except after adequate disclosure to and with the consent of the clients, preferably after receiving an independent legal advice, shall not act or continue to act in a matter when there is a conflicting interest, which gives rise to substantial risk that the advocate's representation of the client would be materially and adversely affected by the advocate's duties to another current client, a former client, or a third person including, but not limited to, the duties and loyalties of the advocate or a partner or professional associate of the advocate of the law firm in which such advocate is a partner or associate, to another client, whether involved in the particular matter or not, including the obligation to communicate information.
8. Before the advocate accepts a brief from more than one client in the same matter, the advocate must advise the clients that the advocate or a partner or professional associate of the advocate has been asked to act for both or all of them, that no information received in connection with the matter from one can be treated as

confidential so far as any of the others is concerned and that, if a dispute develops that cannot be resolved, the advocate cannot continue to act for both or all of them with respect to the matter and may have to withdraw completely.

9. Where a advocate or a partner or professional associate of the advocate has a continuing relationship with a client for whom the advocate or a partner or professional associate of the advocate in the law firm in which such advocate is a partner or associate acts regularly, before the advocate accepts joint briefs for that client and another client in a matter or transaction, the advocate must advise the other client of the continuing relationship and recommend that the other client obtain independent legal advice about the joint retainer. If, following such disclosure, all parties are content that the advocate act for them, the advocate should obtain their consent, preferably in writing, or record their consent in a separate letter to each. The advocate should, however, guard against acting for more than one client where, despite the fact that all parties concerned consent, it is reasonably obvious that a contentious issue may arise between them or that their interests, rights or obligations will diverge as the matter progresses.
10. If a contentious issue arises between clients on a joint retainer, the advocate, although not necessarily precluded from advising them on other non-contentious matters, would be in breach of this Code if the advocate attempted to advise them on the contentious issue. In such circumstances the advocate should ordinarily refer the clients to other advocates. However, if the issue is one that involves little or no legal advice, for example, a business rather than a legal question in a proposed business transaction, and the clients are sophisticated, they may be permitted to settle the issue by direct negotiation in which the advocate does not participate.
11. An advocate may only act in a matter which is adverse to the interests of a current client provided that:
    a. the matter is unrelated to any matter in which the advocate is acting for the current client; and
    b. no conflicting interest is present
12. Where an advocate has acted for a former client and, in that context, has obtained confidential information relevant to a new matter, the advocate's partner or associate of the law firm in which such advocate is a partner or associate may act in the new matter against the former client if

a. the former client consents to the advocate’s partner or associate acting, or

b. the new matter does not involve attacking the prior legal work or, in effect, changing sides on a central aspect of the prior legal work and the law firm establishes that it is in the interests of justice that it act in the new matter, having regard to all relevant circumstances, including

    i. the adequacy and timing of the measures taken to ensure that no disclosure of the former client’s confidential information to the partner or associate having carriage of the new matter will occur,

    ii. the extent of prejudice to any party,

    iii. the good faith of the parties,

    iv. the availability of suitable alternative counsel, and

    v. issues affecting the public interest.

13. An advocate may act against a former client in a fresh and independent matter wholly unrelated to any work the advocate has previously done for that person. An advocate may advise, represent or take a position for or against a particular issue for another client where the immediate interests of the former client are not directly and adversely affected by the advocate’s representation of another client. However, if the reputation of the former client is in question, and/or mala fides are alleged against him, and the same would conflict with the position taken by the advocate in the previous proceeding, the advocate shall:

a. Divulge such fact to the present client, and offer not to press issues on that point; or

b. Decline to accept the present engagement entirely;

14. Counsel should not become personally, as opposed to professionally, associated with his/her client’s interest. he/she should not, e.g., stand bail for his/her client, nor take part in a public movement for his/her reprieve.

15. An advocate shall not, directly or indirectly, bid for or purchase, either in his/her own name or in any other name, for his/her own benefit or for the benefit of any other person, any property sold in the execution of a decree or order in any suit, appeal or other proceeding in which he/she was in any way professionally engaged. this prohibition, however, does not prevent an advocate from bidding for or purchasing for his/her client any property which his/her client may himself legally

bid for or purchase, provided the Advocate is expressly authorised in writing in this behalf.

16. An advocate shall not directly or indirectly bid in court auction or acquire by way of sale, gift, exchange or any other mode of transfer either in his/her own name or in any other name for his/her own benefit or for the benefit of any other person any property which is subject matter of any suit appeal or other proceedings in which he/she is in any way professionally engaged.

VI. Client-attorney privileged communication

The attorney-client privilege is the oldest of the evidentiary privileges with a history that can be traced to Roman and canon law.[13]In accordance with the justification for professional privileges in general, the attorney-client privilege was thought to be essential to the establishment and preservation of a relationship based on trust between attorney and client. Subsequently, a new justification was found to sustain this pledge. This was the theory that claims that disputes which may lead to litigation can most justly and expeditiously be handled by practised experts, namely lawyers and that these experts can act effectively only if they are fully advised of the facts by the parties whom they represent.[14] The settled rationale behind the attorney-client privilege is that it promotes honest and complete disclosure by clients and thereby serves the public's interest in competent legal representation.[15] Without the guarantee of confidentiality, clients would hesitate to reveal embarrassing or damaging facts, and attorneys would be forced to render legal advice and services based on partial knowledge of clients' situations.

(A) Application of the Rule:

The application of professional privilege requires the satisfaction of the following heads formulated by Wigmore:

(1) Where legal advice of any kind is sought

(2) from a professional legal advisor in his capacity as such,

(3) the communications relating to that purpose,

(4) made in confidence

(5) by the client,

[13] Fried, "The Lawyer as a Friend: The Moral Foundations of the Attorney-Client Relation", 85 Yale LJ 1060 (1976); Hazard, "An Historical Perspective on the Attorney Client Privilege, 66 Calif.L.Rev 1061 (1978).
[14] Edward W.Cleary et al, McCormick on Evidence, 3rd edn., West Publishing Co: Minnesota, 1984, p.205
[15] Upjohn Co. v. United States, 449 U.S. 383, 389 (1981).

© 2022. International Journal of Law Management & Humanities

(6) are at his instance permanently protected

(7) from disclosure by himself or by the legal adviser,

(8) except the protection be waived.

(B) Scope of the privilege

Are in house counsels included under section 126 of the Evidence Act?

The attorney-client privilege protects certain communications between attorney and client from compelled disclosure. The privilege applies to clients who are individuals as well as to corporate clients.[16] Many corporations, however, rely on in-house attorneys for many, if not all, of their legal needs.[17] Often, in-house attorneys have official responsibilities that involve them in the management of the company.[18] Even if the attorneys do not have official nonlegal responsibilities, the corporation may seek the opinion of in-house attorneys with regard to all sorts of issues, some of which may be clearly legal issues, some of which may be clearly business issues, and some that are a jumble of both. The application of the attorney-client privilege in the corporate representation environment creates problems because the tradition of the privilege requires that it apply only to a communication involving a lawyer in his or her professional legal capacity and only if the communication relates to obtaining or rendering legal advice, services, or assistance.

In *Blackpool Corporation* v. *Locker*[19] the court observed that in order for the privilege to apply what matters is not the lawyers job title but whether he is exercising professional skill as a lawyer. *Alfred Crompton Amusement Machines* v. *Customs and Excise Commissioners*[20] serves as the leading authority to extend this general formulation to the specific case of "in-house lawyers". There the court held that "as salaried legal advisors whether Barristers or Solicitors, employed by a commercial concern had precisely the same duties and privileges as lawyers in independent practice [and therefore] *professional privilege attached to all the communications between the officials and their legal department* both in the ordinary course of work and when litigation was anticipated."

This British position has also been adopted by the Indian Courts. In *Framji Bhikaji* v. *Mohan*

16See Upjohn Co. v. United States, 449 U.S. 383 (1981) (clarifying that the privilege applies to corporations).
17 See Carol Kleiman, In-House Lawyers Making a Comeback, Chi. Trib., Mar. 31, 1991, 8, at 1 (Kemper had 86 attorneys in 1985 and 141 in 1991).
18See, e.g., Bruce T. Rubenstein, Bringing a Broader Business Perspective to the Job of General Counsel, Corp. Legal Times, July 1996, at 7
[19] [1948] 1 All ER 85, 97.
[20] [1972] 2 QB 102.

Singh[21] it was held that the *law of evidence in India is the same as that in England* and courts may refer to English cases in order to interpret it. However there is no need to resort to *Framji Bhikaji* because in *Municipal Corporation of Greater Bombay* v. *Vijay Metal Works*[22] the court held that "a salaried employee who advises his employer on all legal questions and also other legal matters would get the same protection as others, viz., barrister, attorney, pleader or vakil, under Ss.126 and 129, and, therefore, any communication made in confidence to him by his employer seeking his legal advice or by him to his employer giving legal advice should get the protections of Ss.126 and 129."

(C) What constitutes legal advice?

In *Municipal Corporation of Greater Bombay* v. *Vijay Metal Works*[23] the Law Officer of the Municipal Corporation had prepared a note for the purpose of sending a reply by the Municipal Commissioner to a letter of the State Government. *No legal advice was sought on any question*. The sum and substance of the note was that eviction proceedings under the Corporation Act had been started against the occupants of the Arches below a bridge on the ground of reconstruction of the said bridge *but that* these people were not actually covered and proceedings should be dropped. The communication was held not to be privileged. *It's important to note that the statements of the law officer concern a legal situation and legal rights but were not construed to be legal advice.* Therefore it can be said that focus is on the term 'advice' and it is not sufficient if there was legal talk or the statements concerned the law. This is consistent with the fact that the term "advice" implies legal guidance given.[24]

Furthermore, it may be argued that the term "advice" must be construed narrowly in the contest of in-house lawyers because of their tendency to act in executive capacity. The court in *Municipal Corporation of Greater Bombay* v. *Vijay Metal Works*[25] recognised the observation in *Crompton* that a legal advisor (in a company) may act in an executive capacity and further that the "system is susceptible to abuse".

(D) Exceptions to the privilege

Despite debate over the proper scope of the attorney-client privilege, courts have been reluctant to establish any general judicial discretionary authority to waive the privilege when a balancing of the relevant interests indicates that abrogation of the privilege is justified.[26] Courts reason

[21] (1893) 18 Bom 263.
[22] AIR 1982 Bom 6.
[23] AIR 1982 Bom 6.
[24] *Black's Law Dictionary*, 17th Edition, page 55
[25] *Supra* n.48 at 9.
[26] In re John Doe Grand Jury Investigation, 562 N.E.2d 69, 71 (Mass. 1990) (refusing to adopt a rule allowing

that only a test that ensures predictability will adequately protect the interests served by the privilege, since clients will be less likely to disclose incriminating or embarrassing information if they are unsure whether the court may later force the attorney to reveal that information in a judicial proceeding.[27] However, certain justifications have been carved out, justifiable in light of the utilitarian justification for the privilege, either because it allows the client to retain some measure of control over the release of confidential information, or because it operates on communications that lie outside the scope of proper attorney-client communications.

1. Waiver

The attorney-client privilege may be waived by client consent. For a waiver to be valid, the client must waive the privilege knowingly and intelligently. The existence of waiver authority does not threaten clients' willingness to disclose, and thus does not undermine the attorney-client privilege; it is simply an outgrowth of the rule that the privilege belongs to the client.[28]

2. The Crime Fraud Exception

The "crime or fraud" exception to the attorney-client privilege operates when a client reveals an intention to commit an act proscribed by law to his or her attorney, or when a client takes advantage of legal advice to advance a fraudulent or criminal plan. The exception generally does not apply to past wrongdoings that a client reveals to an attorney.[29]

3. The Testamentary Exception

Another, more limited exception abrogates the privilege after the death of the client for the limited purpose of resolving disputes between persons claiming under the decedent's estate. This "testamentary" exception is based on the notion that revealing information needed to resolve such disputes effectuates the deceased client's wishes by ensuring that assets are distributed according to his or her wishes. The privilege is not stripped away entirely in such a scenario, however, because the communications are only discoverable by persons with a legitimate stake in the deceased's property, and only in the case of a dispute.

4. The Attorney Self-Defense Exception

The self-defense exception, which arose in America in the 1800s, originally applied only "[to] situations in which the attorney and client [were] in an adversarial posture."[30] It has since been

---

abrogation of the privilege when society's interest in the truth outweighed the harm caused by disclosure).

[27] Erick S. Ottoson, "COMMENT: Dead Man Talking: A New Approach to the Post-Mortem Attorney-Client Privilege", 82 Minn. L. Rev. 1329 (1998) at 1338.

[28] Geoffrey C. Hazard, Jr. et al., *The Law and Ethics of Lawyering* 271-72 (2d ed. 1994)

[29] David J. Fried, Too High a Price for Truth: The Exception to the Attorney-Client Privilege for Contemplated Crimes and Frauds, 64 N.C. L. Rev. 443, 443 (1986);

[30] Jennifer Cunningham, Note, Eliminating Backdoor Access to Client Confidences: Restricting the Self-Defense

extended to include situations in which the attorney is sued or prosecuted by a third party.[31]

VII. Case laws on 'privileged communication'

1. Superintendent & Remembrancer v. Satyen Bhowmick And Ors[32]

Section 14 of the Official Secrets Act provides a Court may possess to order the exclusion of the public from any proceedings if, in the course of proceedings before a Court against any person for an offence under this Act, the prosecution makes an application that publication of any evidence to be given would be prejudicial to the safety of the State. This means that the Court may make an order prohibiting the publication of evidence to be given or of any statement to be made in the course of proceedings if it is of opinion that the proceedings would be prejudicial to the safety of the State. On the allegation that the accused had passed on some military secrets to the enemy resulting in serious detriment to the safety and security of the country the accused were charge-sheeted under sections 3, *9 and 10* of the Act.

During the commitment inquiry the prosecution prayed that the accused should not be allowed to have access to or be given copies of statements of witnesses recorded by the Magistrate. The defense lawyers were allowed to take notes of the statements of witnesses. When the Magistrate asked the defense lawyers to produce their note-books for perusal, they claimed privilege under *section 126* of the Evidence Act on the ground that they contained certain instructions given to them by the accused which amounted to privileged communication and that for this reason they could not be looked into by the Court.

The Magistrate upheld the objection. During the commitment inquiry the State filed an application under *s. 14* of the Act praying that the proceedings be held in camera and public should be excluded from attending the hearings of the case because the statements made in the course of the proceedings would be prejudicial to the safety of the State. It was also prayed that apart from excluding the public from the hearings of the proceeding, the accused should not be allowed to have access to, or be given copies of, the statements of the witnesses recorded by the Magistrate or those recorded earlier during police investigation. The Magistrate partly allowed the application but permitted the defense lawyer to take copious notes of the statements of witnesses in order to be in a position to cross-examine the witnesses. Subsequently, the Magistrate directed the lawyer to produce his notebook so that the Magistrate may examine if only a summary of the evidence had been taken by the lawyer or the statements had been taken

Exception to the Attorney-Client Privilege, 65 N.Y.U. L. Rev. 992, 1009 (1990).

[31] Meyerhofer v. Empire Fire & Marine Ins. Co., 497 F.2d 1190 (2d Cir. 1974).

[32] 1981 AIR 917

in extenso in which case it would amount to publication and, therefore, would be barred by s. 14 of the Act.

The lawyer of the defense appearing before the Magistrate first agreed to show his note-book but later claimed privilege under *s. 126* of the Evidence Act on the ground that the register in which he had taken down the notes of the evidence also contained certain instructions given to him which amounted to a privileged communication and could not be looked into by the Court. In this view of the matter the Magistrate found himself helpless and proceeded with the inquiry. As the prosecution was not satisfied with the procedure adopted by the Magistrate, the State filed a revision before the High Court for quashing of the order of the Magistrate in allowing the lawyer to cross-examine the witnesses without impounding the notes comprising the statements of the witnesses taken down in extenso by the lawyer.

The observations made by the High Court on the conduct of the Magistrate or on the lawyer were not at all called for because both of them were doing their duties according to law. On the view that we have taken, the Magistrate was fully justified in not compelling the lawyer to surrender his register which undoubtedly contained a part of the privileged communication and even if the lawyer had taken down the evidence in extenso for the limited purpose of using it to defend the accused or cross-examine the witnesses, he could not be prevented from doing so, nor does s. 14 contemplate or envisage such a course of action. The Magistrate also in declining to give copies of the statements concerned to the accused, took an erroneous view of s. 14 of the Act which, as we have already held, did not debar the Magistrate from giving copies to the accused for the purpose of his defense. Thus, we are satisfied that the judgment of the High Court under appeal is vitiated by an error of law and it has not correctly interpreted s. 14 of the Act.

2. The Superintendent vs The Registrar[33]

The writ petition is filed by the Superintendent of office of the Public Prosecutor, High Court, Madras, seeking to challenge the summons issued by the first respondent, Tamil Nadu Information Commission. The summons came to be issued on a complaint made by the second respondent, dated 6.12.2008. The second respondent initially applied to the Additional Public Prosecutor, who also was designated as the Information Officer of the office of the Public Prosecutor under the Right To Information Act (for short RTI Act), dated 7.7.2008. In that letter, he sought for records relating to the FIR in Dharmapuri City Police Station in Crime No.2208/2001 as well as the judgment of this court in Criminal Appeal No.699 of 2005, dated

[33] on 5 January, 2010

21.2.2008. The petitioner wanted to have Photostat copies of all the documents relating to these two references from his office, including the office noting found in the file. He also wanted to have the copy of the opinion tendered by the Public Prosecutor regarding filing of an appeal against the order of this court.

On receipt of the said requisition, the petitioner's office informed that they are not in a position to inform the second respondent as he was not entitled to get such information. In the meanwhile, the petitioner's office informed that whatever information sought for by the second respondent have been sent to the Home (Police) Department. The said department by G.O.Ms.No.1042, Public, dated 14.10.2005 was exempted from the purview of the RTI Act. Further, they had already informed that the opinion tendered by their office cannot be divulged to the second respondent. It was further impressed that the relationship between the office of the Public Prosecutor and the Government is one of lawyer-client relationship. Under Section 126 of the Indian Evidence Act, 1872, it is a privileged information and there is a bar from divulging such information. Learned Special Government Pleader contended that the information sought for by the first respondent Commission is a privilege communication and is fully protected by Section 126 of the Indian Evidence Act. Therefore, there is no necessity to furnish any information as sought for by the second respondent and as directed by the Commission.

3. Watch Tower Bible v. Union Of India[34]

The appellant society was served with the show cause notice dated 6th June 2000 issued by the 2nd respondent alleging there in breach of the provisions of the Act by the society. Thus the appellant - society was called upon to show cause why acceptance of foreign contribution by them should not be prohibited. The appellant - society vide their reply dated 4-7-2000 replied in detail to the show cause notice in which society claims to have dealt with each and every point raised in the show cause notice. While hearing this appeal request was made by the learned Counsel appearing for the appellant that the basic document forming basis of the impugned order, in respect of which privilege is being claimed by the respondents, should be before Court While deciding the issues involved in the appeal. In this view of the matter both the parties made a joint request that the issue with regard to the right of the respondents to claim privilege under Section 124 of the Evidence Act, should be considered and decided first before proceeding to hear the appeal on merits. Accordingly, parties were called upon to address this Court on the issue of 'privilege' claimed by the respondents. That is how the question of privilege

[34] AIR 2002 Bom 83

came up for hearing and decision before this Court.

Ordinarily no privilege is created in law by the mere fact that a communication is made to a person in express confidence. No pledge or oath of secrecy can protect a communication from disclosure in a court when it is necessary for elicitation of truth or in the interest of justice. Privileged communications enjoy protection for unique reasons. The Law of Evidence generally seeks accuracy in fact-finding by receiving relevant evidence thought to be reliable, while rejecting that thought to be insufficiently probative or trustworthy. But privilege communications, which by usual evidentiary standards may be highly probative as well as trustworthy, are excluded because their disclosure is inimical to a principle or relationship that society deems worthy of preserving and fostering. For example, the law confers upon the individual the constitutional privilege of not incriminating himself; it also accords a privileged status to confidential communications between attorney and client, husband and wife and between certain other communicants in special, private relationships. The Cost of evidentiary privilege is apparent in the court room probative and otherwise admissible evidence is suppressed, requiring the trier to decide factual issues without its benefit. Thus, the application of an evidentiary privilege obviously increases the probability that judicial disputes will be decided erroneously. A confidential communication to a clerk, to a Trust, to a Commercial Agency, to a Banker, to a Journalist, to a Broker or any other person not holding one of the special relations recognized by law, is not privileged from disclosure, but the law recognizes that some communication between the person having special relations should be privileged such as communications between Spouses, Attorney and Client. Confidential communications which can be broadly placed into two categories State Secrets or Executive Privileges. The Phrase "Public Officer" used in Section 124 needs to be understood in the context in which it is used in the section itself. He is an officer with public as opposed to private duties who received communications made to him in official confidence of such a nature that disclosure in certain cases would cause injury to the public interests. This section follows the English Law and makes the officer the Judge, as to whether a communication made to him in official confidence should be or should not be disclosed. If he thinks that the public interest would suffer by such disclosure, he is entitled to refuse to disclose the communication. On principle or public policy the official transaction between the heads of the department of the State and their subordinate officers are in general treated as privileged communications. The communications made by one Secretary to the Government is a communication in respect of which privilege can be claimed. Under the section whether the communication was made in official confidence is matter for the Court to decide and whether the public interest would suffer

© 2022. International Journal of Law Management & Humanities

by its disclosure is for the public officer to decide.

VIII. Confidentiality of communication

Having its roots in the 16th century,[35] the doctrine of client confidentiality privilege has become an integral part of UK common law and is accepted around the world. It is generally recognized that privilege would not cover non-attorneys such as accountants, business consultants and other advisors. For instance, in Australia, privilege is available with respect to confidential communication with lawyers made for the 'dominant' purpose of obtaining legal advice. Likewise, in Singapore, privilege does not apply to advice from non-lawyers.[36] The US only recognizes client-attorney privilege, and as noted by the US Supreme Court in a 1984 case: "no confidential accountant-client privilege exists under federal law."[37] Civil law countries like France and Japan also recognize privilege with respect to communication with lawyers. The EU Court of Human Rights read client-attorney privilege as a part of the right to privacy under Article 8 of the European Charter of Fundamental Rights.[38] In India, the benefit of privilege is codified within the Indian Evidence Act, 1872 which restricts its application to communication with lawyers or attorneys.

Whether a client seeks complex tax planning advice or wishes to litigate a contractual claim, she has a right to freely discuss the matter with her attorney without running the risk of breach of confidentiality. There are several policy reasons why the benefit of legal privilege does not extend beyond the client-attorney relationship.[39]

(A) Difference between privilege communication and information confidentiality

The cleanest definition of these concepts is probably found in Keith-Spiegel and Koocher's

Ethics in Psychology text:

"Confidentiality refers to a general standard of professional conduct that obliges a professional not to discuss information about a client with anyone. Confidentiality may also be based in statutes (i.e. laws enacted by legislatures) or case law (i.e. interpretations of laws by courts). But when cited as an ethical principle, confidentiality implies an explicit contract or promise not to reveal anything about a client except under certain circumstances agreed to by both

[35] The principle is said to have been first applied in 1577 by a UK Court in Berd v Lovelace, [1577] Cary 62
[36] Pratt Holdings Pty Ltd v Commissioner of Taxation, [2004] FCAFC 122
[37] United States v. Arthur Young & Co. - 465 U.S. 805 (1984). Quoting Couch v. United States, 409 U. S. 322 (1973
[38] Campbell v United Kingdom, [1992] 15 EHRR 137
[39] Available at : http://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/article/client-confidentiality-privilege-only-for-lawyers-and-not-for-accountants.html

© 2022. International Journal of Law Management & Humanities [ISSN 2581-5369]

parties."

"Privilege (or privileged communication) is a legal term describing certain specific types of relationships that enjoy protection from disclosure in legal proceedings. Privilege is granted by law and belongs to the client in the relationship. A client is usually not permitted to waive a privilege selectively"[40]

LAW IN INDIA

Duty of Confidentiality

India does not have a legislation specifically dealing with confidentiality of data ,[41] nevertheless, the Bar Council of India Rules - Part VI – Rules Governing Advocacy – Chapter II – Standards of Professional Conduct and Etiquette – § IV – Sub Section 24 states that, "an advocate shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client." Part VI – Rules Governing Advocacy – Chapter II – Standards of Professional Conduct and Etiquette – § IV – Sub Section 19 – states, " an advocate shall not act on the instructions of any person other than his client or his authorized agent".[42]

The joint reading of both these provisions reflects the Indian Lawyer's statutory requirement to abide with client's confidentiality.

A Lawyer-Client relationship is quite clearly accepted as a fiduciary relationship. Fiduciary relationship in law is ordinarily a confidential relationship;[43] one which is founded on the trust and confidence reposed by one person in the integrity and fidelity of the other and likewise it precludes the idea of profit or advantage resulting from dealings by a person on whom the fiduciary obligation is reposed.[44]

ENGLISH LAW

In England, the main category of privilege afforded to a communication is legal

---

[40] *Id.*

[41] Indian law on Ethics, Confidentiality and Conflict of Interest", available at http://lpowatch.blogspot.com/2010/01/indian-law-on-ethics-confidentiality.html accessed on 08th, December, 2010.

[42] See http://lawmin.nic.in/la/subord/bcipart6.htm#chapter2 accessed on 08th December, 2010

[43] Shri D. R. Dhingra v. Department of Personnel & Training (DoPT), Central Information Commission, AppealNo.
CIC/WB/A/2008/01475 dated 4.9.2008, available at http://indiankanoon.org/doc/1600764/ accessed on 6 April 2016

[44] "Client confidentiality privilege: Only for lawyers and not for accountants", available at http://www.nishithdesai.com/New_Hotline/Tax/TAX%20+%20Dispute%20Resolution%20Hotline_Oct2109.htm accessed 6 December 2016

professional privilege. Further there are two types of legal professional privilege:

1. Legal advice privilege: It protects communication between a lawyer in his professional capacity and his client provided they are confidential and are for the purpose of seeking or giving legal advice.
2. Litigation privilege: the second type of legal professional privilege arises only after litigation or other adversarial proceeding are commenced or contemplated. It is wider than legal advice privilege and protects all documents produced for sole and dominant purpose of the litigation, including all communication between a lawyer and his client, a lawyer and his non professional agents, a lawyer and a third party.[45]

(A) Comparison of English law and Indian law

The privileges under the English law have an exception similar to that under Indian law but the only difference is that under the Indian law, any communication made in furtherance of an illegal purpose is not privileged. Under the English law, the purpose must be criminal and not merely illegal.[46]

(B) Client confidentiality privilege for other professionals

The High Court of Justice (Queen"s Bench Division) of England, in the recent case of Prudential PLC v. Special Commissioner of Income Tax,[47] refused to extend the professional confidentiality privilege to accountants and held that it applies only to the lawyers. Therefore, the communication between an accountant and client can be compelled to be disclosed to any competent authority.

Unlike the UK, where confidentiality of client communication is recognized under common law, the position in India goes a step ahead as the confidentiality is also granted statutory protection under section 126 of the Evidence Act, 1872. However, such protection extends only to information shared with lawyers and their employees, and no other professionals.[48]

IX. CONCLUSION

It is imperative to understand that conflict of interest, privilege communication and confidential information constitute an important part in maintaining ethical standard among lawyers. It also

[45] Legal Advice Privilege, available at http://www.freshfields.com/publications/pdfs/practices/legaladvice.pdf accessed on 08th December, 2010

[46] Gauri Kulkarni – "Privileged Communications", Available at http://www.legalserviceindia.com/articles/pc.htm accessed on 05th April, 2016.

[47] [2009] EWHC 2494 (Admin)

[48] Section 126, Indian Evidence Act, 1872

preserves the relationship of trust between the lawyers and the client and ensures that the people continue to approach the lawyers without any fear or deterrence of violation of their rights. The standard is based on human relations and finds ground in deep rooted ethical norms which have been imbibed in the conduct of legal proceeding and the in the private communication between the lawyers and their clients.

*****

© 2022. International Journal of Law Management & Humanities [ISSN 2581-5369]

X. References

- The Bastrop Advertiser (Bastrop, Tex.), Vol. 57, No. 34, Ed. 1 Saturday, December 4, 1909
- Karl Gottfried Maeser, President of Brigham Young University
- Francis Jeffrey, Lord Jeffrey (23 October 1773 – 26 January 1850) was a Scottish judge and literary critic.
- Young India, Volume 9 – Gandhi (Mahatma); 1927
- 4th Chief Justice of the Supreme Court of the United States
- *AIR 1994 SC 1654: 1994(2) SCC 204*
- S. Stevens, "Conflicts of Interest, Part I" 70 Oregon State Bar Bulletin 9 (Oct. 2009) at 9. - See more at: http://legalsutra.com/1498/conflicts-between-the-interests-of-two-clients-and-the-lawyer%e2%80%99s-duty/#sthash.I7QRNtuO.dpuf
- S. Stevens, "Conflicts of Interest, Part II – Former Client Conflicts" 70 Oregon State Bar Bulletin 9 (Dec. 2009) at 9. - See more at: http://legalsutra.com/1498/conflicts-between-the-interests-of-two-clients-and-the-lawyer%e2%80%99s-duty/#sthash.I7QRNtuO.dpuf
- Lawyer's Professional Indemnity Company, Managing Conflict of Interest Situations (available at www.practicepro.ca/practice/pdf/conflict.pdf) (1998) at 6. - See more at: http://legalsutra.com/1498/conflicts-between-the-interests-of-two-clients-and-the-lawyer%e2%80%99s-duty/#sthash.I7QRNtuO.dpuf
- Canadian Bar Association Task Force on Conflicts of Interests, Conflicts of Interest Toolkit (available at www.cba.org/CBA/groups/doc/conflicts_toolkit.doc) (Aug. 2008) at 8-10. - See more at: http://legalsutra.com/1498/conflicts-between-the-interests-of-two-clients-and-the-lawyer%e2%80%99s-duty/#sthash.I7QRNtuO.dpuf
- Malhi, "Conflict between Interest and Duties of a Lawyer" (available at www.legalserviceindia.com/article/details.asp?id=241) (Sep. 2008). - See more at: http://legalsutra.com/1498/conflicts-between-the-interests-of-two-clients-and-the-lawyer%e2%80%99s-duty/#sthash.I7QRNtuO.dpuf
- AIR 1983 SC 1012.
- [1917] 2 Ch. 71.

- [2002] WASC 265 at 272.
- [1993] 4 All E.R. 268.
- Fried, "The Lawyer as a Friend: The Moral Foundations of the Attorney-Client Relation", 85 Yale LJ 1060 (1976); Hazard, "An Historical Perspective on the Attorney Client Privilege, 66 Calif.L.Rev 1061 (1978).
- Edward W.Cleary et al, McCormick on Evidence, 3rd edn., West Publishing Co: Minnesota, 1984, p.205
- Upjohn Co. v. United States, 449 U.S. 383, 389 (1981).
- See Upjohn Co. v. United States, 449 U.S. 383 (1981) (clarifying that the privilege applies to corporations).
- See Carol Kleiman, In-House Lawyers Making a Comeback, Chi. Trib., Mar. 31, 1991, 8, at 1 (Kemper had 86 attorneys in 1985 and 141 in 1991).
- See, e.g., Bruce T. Rubenstein, Bringing a Broader Business Perspective to the Job of General Counsel, Corp. Legal Times, July 1996, at 7
- [1948] 1 All ER 85, 97.
- [1972] 2 QB 102.
- (1893) 18 Bom 263.
- AIR 1982 Bom 6.
- *Black's Law Dictionary*, 17th Edition, page 55
- Erick S. Ottoson, "COMMENT: Dead Man Talking: A New Approach to the Post-Mortem Attorney-Client Privilege", 82 Minn. L. Rev. 1329 (1998) at 1338.
- Geoffrey C. Hazard, Jr. et al., *The Law and Ethics of Lawyering* 271-72 (2d ed. 1994)
- David J. Fried, Too High a Price for Truth: The Exception to the Attorney-Client Privilege for Contemplated Crimes and Frauds, 64 N.C. L. Rev. 443, 443 (1986);
- Jennifer Cunningham, Note, Eliminating Backdoor Access to Client Confidences: Restricting the Self-Defense Exception to the Attorney-Client Privilege, 65 N.Y.U. L. Rev. 992, 1009 (1990).
- Pratt Holdings Pty Ltd v Commissioner of Taxation, [2004] FCAFC 122

- United States v. Arthur Young & Co. - 465 U.S. 805 (1984). Quoting Couch v. United States, 409 U. S. 322 (1973
- Campbell v United Kingdom, [1992] 15 EHRR 137
- Available at : http://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/article/client-confidentiality-privilege-only-for-lawyers-and-not-for-accountants.html
- See http://lawmin.nic.in/la/subord/bcipart6.htm#chapter2 accessed on 08th December, 2010
- Shri D. R. Dhingra v. Department of Personnel & Training (DoPT), Central Information Commission, AppealNo.
- CIC/WB/A/2008/01475 dated 4.9.2008, available at http://indiankanoon.org/doc/1600764/ accessed on 6 April 2016
- "Client confidentiality privilege: Only for lawyers and not for accountants", available at
- http://www.nishithdesai.com/New_Hotline/Tax/TAX%20+%20Dispute%20Resolution%20Hotline_Oct2109.htm accessed 6 December 2016

*****

© 2022. International Journal of Law Management & Humanities