UNIVERSITY OF PETROLEUM AND ENERGY STUDIES

End Semester Examination, December 2017

Program: Integrated B.A L.L.B Energy Law (Hons.) **Semester: IX**
Subject (Course): Professional Ethics, Accountancy for Lawyers and Bar Bench relation
Course Code: LLBL 531 **Max. Marks : 100**
No. of page/s: 06 **Duration : 3 Hrs**

Section A (5*2= 10 marks)

1. What is legal outsourcing?
2. Mention essential professional skills; apart from law, that a lawyer must possess.
3. What do you understand by disciplining of advocates?
4. Comment on composition, constitution and power of Bar Councils.
5. Using ADR as reference, comment on Advocate's role in outside court / informal settlement of disputes.

Section B (4*5= 20 marks)

1. Briefly describe liability upon an advocate for the wrongs he commits in the course of his professional service.
2. Briefly explain the advocates right to strike.
3. Comment on the seven lamps of advocacy.
4. Comment the Impact of Globalization on legal profession

Section C (2*10=20 marks). Answer any two.

1. 'Justice is not a matter of reasoning at all; it is one of being appropriately sensitive and having the right nose for injustice.-Amartya Sen –comment keeping in mind lawyers duty to spread legal awareness and provide legal aid.

2. **"**Nobody has a more sacred obligation to obey the law than those who make the law". Comment.

3. Discuss the rights and interests of an advocate along with restrictions upon the same.

Section D

If the fundamental right of an individual or a group of individuals is violated, the rest of the society has a duty to support the fight for a remedy. Though the word ‘strike’ is not mentioned anywhere in the constitution, as long as the strike remains peaceful, the society is duty bound to support the legitimate cause. If the slight ephemeral inconvenience caused to the society because of a strike, is a valid reason for declaring strike as an illegality then it is the high time for the adjudicative mechanism to wake up.

Right to Strike: Constitutional Realm

The Administrative Tribunals, may act as speedy machinery for redressal of the grievances of the employees in the service matters, but when 1,70,000 employees are dismissed en masse ,as in T.KRangarajan v. State of Tamil Nadu, it is not a trivial service matter but a matter relating to right to life, that is a fundamental right guaranteed under Article 21 of the constitution. It becomes obligatory on the constitutional courts, which exercise the writ jurisdiction to embroil themselves in to the grave situation. Moreover, the administrative tribunals are quasi judicial bodies which some times act according to the executive whims and fancies rather than judicial principles. Article 19 (c) of the Constitution of India provides freedom to form associations and unions. The term Union’s also include trade unions.

The conditions of service of the central government employees are governed by the rules made by the president under Article 309 of the constitution or under the Act of the parliament enacted under the same rule. In Union of India v. Tulsi Ram Patel it was stated that the opening words of article 309 "subject to the provisions of the Constitution" make it clear that the conditions of service, whether laid down by the legislature or prescribed by the rules, must confirm to the mandatory provisions of the constitution.

Article 43-A of the constitution speaks about the participation of workers in management of industries. It says that the state shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry. If the workers require supporting their stand in parlance with the management an effective action like the right to strike needs to be at their reach. In Radhe Shyam Sharma v. Post Master General it was stated that Article 43-A of the Constitution clearly states that the State shall take steps by suitable legislation or in any other way to secure the participation of workers in the management of undertakings, establishments or other organisation engaged in any industry. The High-powered Expert Committee on Companies and MRTP Acts headed by Rajinder Sachar J. of the Delhi High Court has also made certain recommendations about provisions to be made for workers' participation in management of companies.

Ahmadi J. in B.R. Singh v. Union of India observed: "The right to form associations or unions is a fundamental right under Article 19 (1) (c) of the Constitution. Section 8 of the Trade Unions Act provides for registration of a trade union if all the requirements of the said enactment are fulfilled. The right to form associations and unions and provide for their registration was recognized obviously for conferring certain rights on trade unions. The

necessity to form unions is obviously for voicing the demands and grievances of labour. Trade unionists act as mouthpieces of labour. The strength of a trade union depends on its membership. Therefore, trade unions with sufficient membership strength are able to bargain more effectively; reduced if it is not permitted to demonstrate. "Strike in a given situation is only a form of demonstration. There are different modes of demonstrations, e.g., go-slow, sit-in, work-to-rule, absenteeism, etc., and strike is one such mode of demonstration by workers for their rights. The right to demonstrate and, therefore, the right to strike is an important weapon in the armoury of the workers. This right has been recognised by almost all democratic countries. Though not raised to the high pedestal of a fundamental right, it is recognised as a mode of redress for resolving the grievances of workers".

It has become a ubiquitous practice to blame the workers for the man days lost due to the strike, but why aren't the employers blamed for the lock outs? The industrialists according to their profit motive end up the lives of the dependent workers in enigma. The recent statistics show that the numbers of man days lost due to lock outs are more than that of strikes.

Judiciary on Right to Strike

A series of judicial decisions emphasized on the legality or the illegality of the strike, but did not impose a ban on the right to strike. In Management of Kairbeta Estate, Kotagiri v.Rajamanickan the full bench observed that, just as a strike is a weapon available to the employees for enforcing their individual demands, a lockout is a weapon available to the employer to persuade by a coercive process the employees to see his point of view and to accept his demands. In the struggle between the capital and the labour, the weapon of strike is available with the labour.

It was also held that, strike a weapon to force the employer to accede to employees demand and to give them the legitimate dues is a strike which is recognised under the Industrial Disputes Act as defined in Sec 2 (q).

In Bank of India v/s I.S.Kalewala the constitutional bench held that, whether the strike is legal or justified is question of fact to be decided with the help of the evidence on record.
In Crompton Greaves Ltd v. Workmen the division bench held it that a strike is legal if it does not violate any provision of the statute. Again a strike cannot be said to be unjustified unless the reasons for it are entirely perverse and unreasonable. Whether a particular strike was justified or not is a question of fact which has to be justified in the light of the facts and circumstances of each case.

In the case concerning Management of Chandramalai Estate, Ernakulam v. Its workmen a division bench judgment, there was a dispute between the management and the workers and the labour minister decided to arbitrate the matter. In this case it was held that the strike in protest of the recalcitrant attitude of the management in boycotting the conference, held on 23rd November, 1961 by the labour minister of the state was not unjustified. It was also held in this case that strike is legitimate and sometimes an unavoidable weapon in the hands of the workers. There may be cases where the demand is of such an urgent and serious nature that it would not be reasonable to expect labour to wait till after the government takes notice. In such cases, strike even before such a request has been made may well be justified.

Right To Strike: International Perspectives And Collective Bargaining

The rights of the workers to negotiate and collective bargain are won after a struggle for three centuries right from the beginning of the industrial revolution in 1765. ILO (International Labour Organization) guarantees these rights and many other labour rights with the help of international conventions. India is a founding member of the ILO and it is naturally expected that it doesn't violate the international labour standards. The two most important conventions in relation to right to strike are convention no. 87 (Freedom of Association and Protection of the Right to Organise Convention, 1948) and 98 (Right to Organise and Collective Bargaining Convention, 1949). Even though the convention does not refer to the right of strike, the ILO committee on experts has been regarding it as an essential part of the basic right to organize.

In the opinion of the ILO committee of experts so long as a suitable and effective alternate remedy for dealing with the demands of the employees is made available there would be no objection to the right of strike being restricted. The scheme of the joint consultative Machinery which is at present functioning for dealing with the grievances of the Central government covers mainly class III and class IV employees of the central government. The scope of national and departmental council set up under the scheme includes all matters relating to conditions of service and work, welfare of the employees and improvement of efficiency.

The convention No. 87 had been ratified by 144 countries and the convention No. 98 had been ratified by 154 countries. India has ratified neither of these two conventions. The main reason for our not ratifying these two Conventions is the inability of the Government to promote unionisation of the Government servants in a highly politicised trade union system of the country. Freedom of expression, Freedom of association and functional democracy are guaranteed by our constitution. The Government has promoted and implemented the principles and rights envisaged under these two Conventions in India and the workers are exercising these rights in a free and democratic society. Our Constitution guarantees job security, social security and fair working conditions and fair wages to the Government servants. They have also been provided with alternative grievance redressal mechanisms like Joint Consultative Machinery, Central Administrative Tribunal etc . Even though, these conventions were not ratified, the requirement was not felt prior to the Supreme Court judgment banning the right to strike.

The principal objects of the Industrial Disputes Act 1947, as analysed by the Supreme Court in the case of Workmen of Dimakuchi Tea estate v. Management of Dimakuchi Tea Estate

(1) promotion of measures for securing amity and good relations between the employer and the workmen.
(2) relief to workmen in the matter of lay off, retrenchment and closure of an undertaking.
(3) collective bargaining.

Foreign Constitutional Outlook
Strike, means 'concerned stoppage of work by workers done with a view to improving their wages or conditions, or giving vent to a grievance or making a protest about something or the other, or supporting or sympathizing with other workers in such endeavour' . The right to strike has acquired an implied authorization from the Universal Declaration of Human Rights (1948). Articles 23,24 and 25 of the declarations assert every one's right to work,

right to just and favourable remuneration and right to form and join trade unions and also the right to rest, leisure, leave etc. and the right for fair living conditions with necessary social benefits.

The English Courts have already recognised this right as a justiciable right. Lord Denning in Morgan v. Fry stated that strike is labour's ultimate weapon and in the course of hundred years it has emerged as the inherent right of every worker. It is an element which is of the very essence of the principle of collective bargaining. Right from the industrial revolution the reasonable right of the workers to strike work is recognised in various countries. Article 32 of the constitution of Rwanda lays down that:
The right to strike shall be exercised with in the laws by which it is regulated. It may not infringe upon the freedom to work". Article 42 of the constitution of Ethiopia provides the right to strike to the workers and also enjoins the state to provide such right, subject to any restrictions, even to the government employees. Article 34 of the constitution of Angola guarantees right to strike and prohibits lockouts. Brazil, the developing Latin American country also guarantees the right to strike under Article 9 of the constitution. Capitalist countries like Japan under Article 28 and South Korea under Article 33 of their respective constitutions provide the right to strike.

Keeping in mind the Supreme Court's judgment in Ex- Capt. Harish Uppal vs. UOI & Ors.

1. The Bar Council of India has since filed an affidavit wherein extracts of a Joint meeting of the Chairman of various State Bar Councils and members of the Bar Council of India, held on 28th and 29th September, 2002, have been annexed. The minutes set out that some of the causes which result in lawyers abstaining from work are:
   I. LOCAL ISSUES
      1. Disputes between lawyer / lawyers and the police and other authorities
      2. Issues regarding corruption / misbehaviour of Judicial Officers and other authorities.
      3. Non filling of vacancies arising in Courts or non appointment of Judicial Officers for a long
      period.
      4. Absence of infrastructure in courts.
   II. ISSUES RELATING TO ONE SECTION OF THE BAR AND ANOTHER SECTION
      1. Withdrawal of jurisdiction and conferring it to other courts (both pecuniary and territorial).
      2. Constitution of Benches of High Courts. Disputes between the competing District and other Bar Associations.
   III) Issues involving dignity, integrity, independence of the bar and judiciary.
   IV) Legislating without consulting the bar council.
   V) National Issues and Regional Issues affecting the public at large/ the insensitivity of all concerned.

Answer any two (25*2=50 marks)

1. Discuss the need of going for a strike for all of the above problems and for each. Why is right to strike by advocates such an important issue when strikes are in general a legal right?

2. If a labourer wants to achieve gains individually, he fails because of his weaker bargaining power, the management with the better economic background stands in a better position to dictate its terms. The Supreme Court and the High Court have having differing views on strike by advocates. Comment. Explain the scenario with respect to the situation in the courts and the implications of strike on the justice system.

3. Either in the name of a strike or otherwise, no lawyer has any right to obstruct or prevent another lawyer from discharging his professional duty of appearing in Court. If anyone does it, he commits a criminal offence and interferes with the administration of justice and commits contempt of Court and he is liable to be proceeded against on all these counts. However, if one group of advocates goes on a strike the remaining advocates are made to strike and not attend the proceedings of the Court. Comment on the statement and being in the legal profession suggest ways/procedures by which such practices can be stopped.

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UNIVERSITY OF PETROLEUM AND ENERGY STUDIES

End Semester Examination, December 2017

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Subject (Course): Professional Ethics, Accountancy for Lawyers and Bar Bench relation
Course Code: LLBL 531 **Max. Marks : 100**
No. of page/s: 6 **Duration : 3 Hrs**

Section A (5*2= 10 marks)

1. Can legal work be outsourced?
2. Is an advocate expected to have skills in accountancy, management etc.?
3. Describe briefly the procedure for enrolment of advocate
4. What do you understand by lawyer-client conflict?
5. Explain conflict of lawyers in client interests vs. mass (society's) interest.

Section B (4*5= 20 marks)

1. Comparatively analyze the Indian code of professional ethics for lawyers to that of other countries.
2. Comment upon the liability created by consumer protection act upon lawyers.
3. With reference to family disputes comment on Advocate's role in outside court / informal settlement of disputes
4. Comment upon ADR and the impact of globalization on it.

Section C (2*10=20 marks). Answer any two.

1. Comment upon the skills which are essential for a lawyer to have a good practice and profession
2. Comment on the regulation of legal profession in India.
3. Comment on the role of an advocate in providing legal aid and spreading legal awareness, with emphasis on 'activism'.

Section D

Lawyer's right to strike: The law revisited

Our labour law professor taught us that in traditionally in industrial relations both the management and the workers union had a tool each. The management had the right of lock-out while the labour union could call a strike. It was in this manner that the two parties remained at an equal footing as far as their bargaining powers were concerned. In fact the constitutional framers understood the importance of citizens coming together for a cause and provided the "right to assemble peacefully and without arms" as a fundamental right available to all citizens of the country.

Modern India, however, has moved on. The Supreme Court in 1997 agreed with a decision of the Kerala High Court that there was no right for any individual or cross-section of a society to call for a bandh or *hardtal* or a general strike. In ***Communist Party of India (Marxist) v. Bharat Kumar*** **AIR 1998 SC 184** the Court declared that "there cannot be any doubt that the fundamental rights of the people as a whole cannot be subservient to the claim of fundamental right of a n individual or only a section of the people." It agreed with the High Court to hold that "there cannot be any right to call or enforce a 'Bandh' which interferes with the exercise of the fundamental freedoms of other citizens, in addition to causing national loss in may ways". In this backdrop the Court pioneered the right of an individual against the right of a cross-section of society to get their views heard.

Similar has been a fate of lawyers. While they are considered as harbingers and guards against an autocratic society (see our recent post for further details on that), yet they are not allowed to gather and voice their opinion. Being of the view that their strike comes in the way of delivering justice to the already suffering litigant, the Supreme Court gave a categorical finding in 2002 holding that lawyers had no right to strike and any such strike or declaration was illegal requiring action against the errant individuals.

Noting that there was overwhelming judicial opinion against the lawyers going on strike and that the dignity the court required from the bar was against the lawyer absconding work and abandoning the client whose brief he held, in ***Ex-Capt. Harish Uppal v. Union of India*** **(2003) 2 SCC 45** a three judge bench of the Supreme Court declared the law in no uncertain terms against lawyers going on strike. The Bench further declared that the lawyers could ventilate their grievances by "giving press statements, TV interviews, carrying out of Court premises banners and/or placards, wearing black or white or any colour arm bands, peaceful protest marches outside and away from Court premises, going on dharnas or relay fasts etc." but not by holding strike and abstaining from appearing in a court.

In as much as the decision reflects the present position of law and an indicative of the settled judicial opinion on the issue, we are extracting the relevant paragraphs of the decision for the benefit of our readers as under;

11) Before considering the question raised it is necessary to keep in mind the role of lawyers in the administration of justice and also their duties and obligations as officers of this Court. In the case of *Lt. Col. S. J. Chaudhary vs. State (Delhi Administration)*

reported in (1984) 1 SCC 722, the High Court had directed that a criminal trial go on from day to day. Before this Court it was urged that the Advocates were not willing to attend day to day as the trial was likely to be prolonged. It was held that it is the duty of every advocate who accepts a brief in a criminal case to attend the trial day to day. *It was held that a lawyer would be committing breach of professional duties if he fails to so attend*.

12) In the case of *K. John Koshy&Ors. vs. Dr.Tarakeshwar Prasad Shaw reported in (1998) 8 SCC 624*, one of the questions was whether the Court should refuse to hear a matter and pass an Order when counsel for both the sides were absent because of a strike call by the Bar Association. *This Court held that the Court could not refuse to hear the matter as otherwise it would tantamount to Court becoming a privy to the strike*.

13) In the case of *Mahabir Prasad Singh vs. Jacks Aviation Pvt. Ltd. reported in (1999) 1 SCC page 37*, an application had been made to the trial Court to suo moto transfer the case to some other Court as the Bar Association had passed a resolution to boycott that Court. It was stated that the lawyers could not thus appear before that Court. The trial Court rightly rejected the application. In a revision petition the High Court stayed the proceedings before the trial Court. This Court held that the High Court had committed grave error in entertaining the revision petition and passing an Order of stay. Following the ratio laid down in Lt. Col. S.J. Chaudhary's case, this Court held as follows:

"15. This is not a case where the respondent was prevented by the Additional District Judge from addressing oral arguments, but the respondent's counsel prevented the Additional District Judge from hearing his oral arguments on the stated cause that he decided to boycott that Court for ever as the Delhi Bar Association took such a decision. Here the counsel did not want a case to be decided by that Court. By such conduct, the counsel prevented the judicial process to have flowed on its even course. The respondent has no justification to approach the High Court as it was the respondent who contributed to such a situation.

16. ***If any counsel does not want to appear in a particular court, that too for justifiable reasons, professional decorum and etiquette require him to give up his engagement in that court so that the party can engage another counsel. But retaining the brief of his client and at the same time abstaining from appearing in that court, that too not on any particular day on account of some personal inconvenience of the counsel but as a permanent feature, is unprofessional as also unbecoming of the status of an advocate***. ***No Court is obliged to adjourn a cause because of the strike call given by any association of advocates or a decision to boycott the courts either in general or any particular court. It is the solemn duty of every court to proceed with the judicial business during court hours. No court should yield to pressure tactics or boycott calls or any kind of browbeating***."

xxx

17) In the case of *B. L. Wadehra vs. State (NCT of Delhi) &Ors. reported in AIR (2000) Delhi 266*, one of the questions was whether a direction should be issued to the lawyers to call off a strike. *xxx* The Delhi High Court then considered various other authorities of this Court, including some set out above, and concluded as follows:

"30. In the light of the above-mentioned views expressed by the Supreme Court, lawyers have no right to strike i.e. to abstain from appearing in Court in cases in which they hold vakalat for the parties, even if it is in response to or in compliance with a decision of any association or body of lawyers. In our view, in exercise of the right to protest, a lawyer may refuse to accept new engagements and may even refuse to appear in a case in which he had already been engaged, if he has been duly discharged from

the case. ***But so long as a lawyer holds the vakalat for his client and has not been duly discharged, he has no right to abstain from appearing in Court even on the ground of a strike called by the Bar Association or any other body of lawyers. If he so abstains, he commits a professional misconduct, a breach of professional duty, a breach of contract and also a breach of trust and he will be liable to suffer all the consequences thereof***. There is no fundamental right, either under Article 19 or under Article 21 of the Constitution, which permits or authorises a lawyer to abstain from appearing in Court in a case in which he holds the vakalat for a party in that case. On the other hand a litigant has a fundamental right for speedy trial of his case, because, speedy trial, as held by the Supreme Court in *HussainaraKhatoon v. Home Secretary, State of Bihar, (1980) 1 SCC 81: (AIR 1979 SC 1360)* is an integral and essential part of the fundamental right to life and liberty enshrined in article 21 of the Constitution. *Strike by lawyers will infringe the above-mentioned fundamental right of the litigants and such infringement cannot be permitted*. Assuming that the lawyers are trying to convey their feelings or sentiments and ideas through the strike in exercise of their fundamental right to freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution. We are of the view that the exercise of the right under Article 19(1)(a) will come to an end when such exercise threatens to infringe the fundamental right of another. Such a limitation is inherent in the exercise of the right under Article 19(1)(a). Hence the lawyers cannot go on strike infringing the fundamental right of the litigants for speedy trial. *The right to practise any profession or to carry on any occupation guaranteed by Article 19(1)(g) may include the right to discontinue such profession or occupation but it will not include any right to abstain from appearing in Court while holding a vakalat in the case*. Similarly, the exercise of the right to protest by the lawyers cannot be allowed to infract the litigant's fundamental right for speedy trial or to interfere with the administration of justice. The lawyer has a duty and obligation to cooperate with the Court in the orderly and pure administration of justice. Members of the legal profession have certain social obligations also and the practice of law has a public utility flavour. According to the Bar Council of India Rules, 1975 "an Advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar or for a member of the Bar in his nonprofessional capacity, may still be improper for an Advocate". ***It is below the dignity, honour and status of the members of the noble profession of law to organize and participate in strike. It is unprofessional and unethical to do so. In view of the nobility and tradition of the legal profession, the status of the lawyer as an officer of the court and the fiduciary character of the relationship between a lawyer and his client and since strike interferes with the administration of justice and infringes the fundamental right of litigants for speedy trial of their cases, strike by lawyers cannot be approved as an acceptable mode of protest, irrespective of the gravity of the provocation and the genuineness of the cause***. Lawyers should adopt other modes of protest which will not interrupt or disrupt court proceedings or adversely affect the interest of the litigant. Thereby lawyers can also set an example to other sections of the society in the matter of protest and agitations.

31. Every Court has a solemn duty to proceed with the judicial business during Court hours and the Court is not obliged to adjourn a case because of a strike call. The Court is under an obligation to hear and decide cases brought before it and it cannot shirk that obligation on the ground that the advocates are on strike. If the counsel or/and the party does not appear, the necessary consequences contemplated in law should follow. The

Court should not become privy to the strike by adjourning the case on the ground that lawyers are on strike. Even in the Common Cause case the Supreme Court had asked the members of the legal profession to be alive to the possibility of Judges refusing adjournments merely on the ground of there being a strike call and insisting on proceeding with the cases. Strike infringes the litigant's fundamental right for speedy trial and the Court cannot remain a mute spectator or throw up its hands in helplessness on the face of such continued violation of the fundamental right.

32. Either in the name of a strike or otherwise, no lawyer has any right to obstruct or prevent another lawyer from discharging his professional duty of appearing in Court. If anyone does it, he commits a criminal offence and interferes with the administration of justice and commits contempt of Court and he is liable to be proceeded against on all these counts.

33. In the light of the above discussion we are of the view that the present strike by lawyers is illegal and unethical. Whatever might have been the compelling circumstances earlier, now there is absolutely no justification for the continuance of the strike in view of the appointment of the Commission of Inquiry and the directions being issued in this case."

18) In our view the conclusions reached are absolutely correct and the same need to be and are hereby approved.

19) Thereafter in the case of *Roman Services Pvt. Ltd. vs. SubhashKapoor reported in (2001) 1 SCC 118*, the question was whether a litigant should suffer a penalty because his advocate had boycotted the Court pursuant to a strike call made by the Association of which the advocate was a member. In answer to this question ***it has been held that when an advocate engaged by a party is on strike there is no obligation on the part of the Court to either wait or adjourn the case on that account***. It was held that this Court has time and again set out that an advocate has no right to stall court proceedings on the ground that they have decided to go on a strike. In this case it was noted that in Mahabir Prasad's case (supra), it has been held that strikes and boycotts are illegal. That the lawyers and the Bar understood that they could not resort to strikes is clear from statement of Senior Counsel Shri. Krishnamani which this Court recorded. The statement is as follows:

"13. ShriKrishamani, however, made the present position as unambiguously clear in the following words:

"Today, if a lawyer participates in a Bar Association's boycott of a particular court that is *ex facie* bad in view of the clear declaration of law by this Hon'ble Court. Now, even if there is boycott call, a lawyer can boldly ignore the same in view of the ruling of this Hon'ble Court in Mahabir Prasad Singh *(1999) 1 SCC 37*."

This Court thereafter directed the concerned advocate to pay the half the amount of the cost imposed on his client. The observations in this behalf are as follows:

"15. Therefore, we permit the appellant to realise half of the said amount of Rs. 5000 from the firm of advocates M/s B.C. Das Gupta & Co. or from any one of its partners. Initially we thought that the appellant could be permitted to realise the whole amount from the said firm of advocates. However, we are inclined to save the firm from bearing the costs partially since the Supreme Court is adopting such a measure for the first time and the counsel would not have been conscious of such a consequence befalling them. Nonetheless we put the profession to notice that in future the advocate would also be answerable for the consequence suffered by the party if the non-appearance was solely on the ground of a strike call. It is unjust and inequitable to cause the party alone to suffer for the self-imposed dereliction of his advocate. We may further add that the litigant, who suffers entirely on account of his advocate's non-appearance in court, has

also the remedy to sue the advocate for damages but that remedy would remain unaffected by the course adopted in this case. Even so, in situations like this, when the court mulcts the party with costs for the failure of his advocate to appear, we make it clear that the same court has power to permit the party to realise the costs from the advocate concerned. However, such direction can be passed only after affording an opportunity to the advocate. If he has any justifiable cause the court can certainly absolve him from such a liability. But the advocate cannot get absolved merely on the ground that he did not attend the court as he or his association was on a strike. If any advocate claims that his right to strike must be without any loss to him but the loss must only be for his innocent client such a claim is repugnant to any principle of fair play and canons of ethics. So when he opts to strike work or boycott the court he must as well be prepared to bear at least the pecuniary loss suffered by the litigant client who entrusted his brief to that advocate with all confidence that his cause would be safe in the hands of that advocate.

16. In all cases where the court is satisfied that the ex parte order (passed due to the absence of the advocate pursuant to any strike call) could be set aside on terms, the court can as well permit the party to realise the costs from the advocate concerned without driving such party to initiate another legal action against the advocate.

Answer any two:

25*2= 50 marks

1. Labour Laws legally allow strikes for the labour like ILO has provisions for strike. The Supreme Court and the High Court have having differing views on strike by advocates. Comment.
2. Either in the name of a strike or otherwise, no lawyer has any right to obstruct or prevent another lawyer from discharging his professional duty of appearing in Court. If anyone does it, he commits a criminal offence and interferes with the administration of justice and commits contempt of Court and he is liable to be proceeded against on all these counts. However, if one group of advocates goes on a strike the remaining advocates are made to strike and not attend the proceedings of the Court. Comment on the statement and being in the legal profession suggest ways by which such practices can be stopped.
3. Do the advocates have a right to strike? Explain the scenario with respect to the situation in the courts and the implications of strike on the justice system.