

COMPARATIVE ANALYSIS OF RULES OF PROFESSION ETHICS UNDER ENGLISH AND ISLAMIC LAWS

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Abstract

With the collapse of many organizations, many researchers are increasingly paying attention to professional ethics. But ethical issues are not always clear cut; there are many grey areas that need to be threaded with care by professional bodies. To determine whether an action or decision is ethically carried out, ethical theories, developed mainly by Western Scholars, are the current theoretical frame work organizations have at their disposal. Theories such as relativism, utilitarianism, the divine command theory, and the virtues ethics are all products of Western understanding of what ethics are and how they are applicable to help one's decision making process. Despite their utility, this paper intends to argue that the Western concepts and understanding of what ethics are is limited and incomprehensive in explaining what is right and what is wrong. In its place, this paper argues that to understand the concepts of ethics that can extend beyond time and space. It has to be analyzed from an Islamic Perspective. Towards this purpose, this paper will compare and contrast between Islamic and Western perspective of ethics and highlight the main weaknesses and limitations of the former. Then, an argument on why Islam can provide the best understanding of ethics will be made.

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1.1 Introduction

The relationship between ethics and the legal profession is just like that of twins who must survive in the society in such a way that no one can do without the other one. The relationship between ethics and the legal profession for a just society cannot be over emphasized as lawyers are expected from time to time to follow setting legal standard whether they represent their clients or not¹. People resort to various kind of rules to guide their lives. This may either be moral or ethical rules. Moral rules and ethics remind us that it is immoral or wrong to covet, tell lies or engage in any activity, which we as legal professionals, have pledged not to engage in. Every society may well disapprove the transgression of these moral or ethical precepts.² Over the decades, societal interest in ethical aspects of legal profession has been on the increase. The question of protection of the individual client, fellow lawyers, courts and legal profession itself, becomes paramount. There has been lately a significant increase in the frequency with which litigants have written petitions against lawyers and judges at the various courts, and even lawyers with a view to suing them. Ethics deals with those standards that prescribe what humans ought to do. It also addresses virtues, duties and attitudes of individuals and the society. In addition, ethics relate to customs, traditions as well as beliefs and worldviews. Notably, there are other fields such as Law, human feeling and culture, which address the same subjects as ethics. So one may ask, what is the difference between ethics and law? Or what is the relationship between the two? The subject matter of this paper. Is that the western concepts and understanding of what ethics are is limited and incomprehensive in explaining what is right and what is wrong. Therefore, the paper argues that to understand the concepts professional ethics that can extent beyond time and space, it has to be analyzed from Islamic perspective. The paper, therefore armed at comparing and contrasting between Islamic and western perspectives and highlight the strengths of the latter and the weaknesses and limitations of the former. And the paper concludes that Islamic ethics are unique with various characteristics that make Islamic perspectives more appropriate to explain ethics. These characteristics are comprehensive, realistic and balance. Ethics from Islamic point of view are consistent with the ability of human beings and they cover every aspects of life.

¹ Kannike A.A (2019) Ethics as the fulcrum of the legal Profession: The Crux of a Successful Lawyer and Just Society, (Nigerian High Courts Case Law, opinion and decisions). Available at <https://loyalnigerialawyer.com>. Access on the 18th day of September, 2021 1.

² Abdullahi I, "The marriage of convenience between medical ethics and Laws" in Sulaiman Ikpechukwu's ops edu. Of Philosophical legacy on issues in Nigeria. Faith printers and publishers, 2008 p.255.

Nigeria being a multi-legal system country, the paper will in addition discuss some ethical principles as provided by the Rules of Professional Conduct for Legal Practitioners 2007.

1.2 Conceptual Clarification of Key Terms

1.2.1 Ethics

The word ethics originate from the Greek word “ethos” which means “character, spirit and attitude of a group of people or culture.”³

The word ethics from the literal point of view means; the study and the philosophy of human conduct, with emphasis on the determination of what is right and wrong.⁴

Technically, it is defined as a “standard of professional conduct applicable to members of legal profession”.⁵ Ethics has further been defined as the branch of philosophy that deals with morality, ethics is consigned with distinguishing between good and evil in the world, between what is right and what is wrong in human actions and activities and between virtuous and non-virtuous characteristic of the persons in the society. Legal ethics is the minimum standard of appropriate conduct within the legal profession. It is the behavioral norms and morals which govern judges and lawyers. In one sense, the term legal ethics refers narrowly, to the system of professional regulations governing the conduct of Judges and Lawyers⁶. In a broader sense, however, legal ethics is simply a special case of ethics in general, as ethics is understood in the central tradition of philosophy and religious from this perspective, legal ethics cuts more deeply than legal regulation. It concerns the fundamental of our moral life as lawyers.⁷

³ Al-Hassan Al-Aidoros, 2013 ethics and ethical theories from an Islamic perspectives international journal of Islamic thought access www.ukm.my accessed on the 23rd July, 2023.

⁴ The new International Webster's comprehensive Dictionary of the English Language, Encyclopedia Edition. Typhoon Media Corporation (2010) p. 436.

⁵ B.A. Garner. Black's Law Dictionary 9th ed. West publishing com. (2004) p.976.

⁶ Abiodun Amuda-Amuda-Kannike, Ethics as the Fulcrum of the legal profession: the Crux of successful Lawyer and just society (Nigerian High courts case Law and decisions) available at <https://loyalnigerialawyer.com> accessed on the 22 July, 2023.

⁷ Abdulmajeed H. Islamic Law and Islamic ethics, interrogating the relationship international journal of Religion and Traditions (IJRT) vol.2 (1), (2016) p. 9-18. www.academiascholarlyjournal.org Accessed on 3rd August, 2019.

1.2.2 Islamic Ethics

The Arabic term *Akhlaq* literally translated into English as ethics⁸ as mentioned in the Qur'an means:

Their ancient customs and it includes religion, character, ideology or doctrine. Another Arabic word which is used as *Akhlaq* is *Adab* which means; manner, attitude, behavior and the etiquette of putting things in their proper place. Though, these two terms are in some cases used as interchangeable words in Arabic Language. Some scholars are of the view that there are some essential differences between *akhlaq* and *adab* in terms of application and source. This is because *akhlaq* (ethics) indicates the moral philosophy while *adab* (morality) signifies the actual practices of moral philosophy⁹. In this case, the former addresses the theoretical background of human conduct, while the latter is more about the actions and manners¹⁰. The latter addresses what is the proper or improper behavior of man, while the former addresses why such actions are proper or otherwise. As such, these two terms are complementary terms and at times serve as interchangeable words that describe what man ought to do.¹¹

Conceptually, *Akhlaq* (ethics) has two meanings; it means the science that deals with the standard of right and wrong of human conducts, particularly what human ought to do. Ethics in this context refers to the study of ethical conduct and behavior and in this sense, ethics means the human effort of studying moral standards and conduct to ensure that man possess the right means; good character or good human behavior. In this understanding, ethics is the human character that Islamic prescribes as such as cheating, corruption, discrimination, lying e.t.c. and enjoins virtues of honesty, compassion, sincerity and loyalty.¹²

The term *khuluq* can be found in Suratul Qalam where Allah said: "And surely you (Prophet Muhammad S.A.W) have the best form of morals".¹³ And in Surah al Ashura Allah also said: "There is no other than *Khuluq* of the ancient"¹⁴

Apart from these Qur'anic provisions, the Prophetic Hadith had made reference to ethics and morality where Aisha reported that the *khuluq* (morals) of the

⁸ Ibid

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid

¹² Ibid

¹³ See Qur'an 67:4 Translated by Sahih international, published by Al-Munlada

¹⁴ See Qur'an 26:137 Translated by Sahih international (supra) Islamic trust 2013.

Prophet was based upon the Qur'an.¹⁵ The Qur'anic dictums and the Prophet's tradition obviously demand that all Muslims should have a high moral standard of behavior and a good character regardless of what profession that they hold.¹⁶ Moreover, lawyers who have specialized knowledge in Law are accounted and obligated to observe certain code of ethics in order to gain confidence and to build trust of the general public on the dignity of the profession.¹⁷

1.2.3 Lawyer

Black's Law Dictionary defined Lawyer as:

One who is licensed to practice law. According to the new international western's comprehensive Dictionary; a lawyer is one who practice Law; as an attorney, solicitor or a member of any legal profession.¹⁸

Generally, a lawyer refers to a specialist in or a practitioner of law, one as an attorney, counsellor, solicitor, barristers or advocate whose profession is to conduct lawsuit as to legal rights and Obligations in other matters.¹⁹

1.3 Lawyers in Islamic History

Lawyers or legal practitioners as they are known in English are unknown to Islamic Jurisprudence. However, there is another concept well entrenched that has been considered to be very close both in theory and practice to the conventional legal practice and that is what is technically referred to as *Attawkil bil khusumat* which may be translated literally to mean: agency in Litigation.²⁰ Legal Profession had already existed since the early period of Islam although it was not formally or specifically called as Lawyers or Solicitors or Barristers.²¹ In fact, the principle of *Wakala bil Khusumat* (agency) has already been practice during the time of *Jahiliyah* where any legal disputes would be referred to *Kahin* or arbitrator. The arbitrator was appointed from the respected tribe and noble

¹⁵ Reported in Sahihul Buhari and Muslim.

¹⁶ For further readings on the meaning of Islamic Ethics, See Abdul Haqq Ansari, Islamic Ethics Concept and Prospect. American Journal of Social Sciences vol.6 no.1 (1989).

¹⁷ Zulkifli. H. Ethical Principles of Lawyers in Islam faculty of shariah and Law, Islamic science university of malaysia

¹⁸ B.A. Garner op.cit. at p. 963

¹⁹ Zulkifli H., Ethical Principles of Lawyers in Islam op.cit. p.i

²⁰ Abdul Razaq. A.A, let your salvation become the price for practicing Islam, Ramadan lecture, NBA House, High Court Complex, Ilorin (May,2019)

²¹ Zulkifli. H. Op.cit at p.6

family. During the time of the Prophet, the practice of *wakala* (agency) can be seen in the case of Mu'adz bin Jabal who was appointed as a judge in Yemen.²²

Furthermore, the jurists of Islamic Law were able to document instances of legal representation of this nature in the practice of the early generation of Muslims. For instance, *Al Qasimy* cited the case of a litigant against whom a judgment had been delivered but the judgment was overturned upon the investigation of Ibn Abbas, a famous Companion who had been briefed by the litigant in the case.²³

Ali bin Abi Talib was also known as one of the best legal representatives amongst the Companions. For instance, in a case of zina (adultery) where a pregnant woman who had been married confessed that she had committed zina, asked Umar to stone her to death. Ali who investigated the case found that the woman was unwillingly to have sexual intercourse with a man in a state of extreme hunger and thirsty, Umar (R.A) accepted Ali's view and freed the woman.²⁴ in the instant case Ali (R.A) acted as a lawyer to the woman, and this signify the roles played by the legal representatives in assisting the court in the process of administration of justice.

1.4 Relationship between Islamic Law and Islamic Ethics

The objective of Islamic law is seen to be similar with Islamic ethics, that is, to construct human life on the basis of virtues [*ma'rufat*], and to cleanse it from vices [*munkarat*]²⁵. Virtues or *ma'rufat*, in general, are in harmony with human nature and its requirements, while vices or *munkarat* are just opposite to virtues. Through Islamic law, we can get clear view of what are the virtues and the vices and these are the norms to which the individual and societal behavior should conform.²⁶

Islamic law covers all aspects of man's life from religious rituals up to social, economic, and judicial system and so on. As a matter of fact, Islamic law has much wider scope and purpose as compared to a western legal system. Like Islamic ethics. Islamic law aims at regulating the relationship of man with Allah,

²² Sunan Abu Dawud: Kitab al-aqdiyah (Trans. Ahmad Hassan (1984) sh. Muhammad Ashraf publishers chap.1344 pp.1016-1019.

²³ Abdul Razzaq A.A. op.cit at p.2.

²⁴ Zulkifli Hassan op.cit at p.4.

²⁵ Abdul IL. "Islamic Law and Islamic Ethics: Interrogating the Relationship" op.cit p.13.

²⁶ Ibid translated by saheed international Al-muntada Al-Islamic 2013

and man with man. Therefore, both Islamic law and Islamic ethics cannot be separated from each other.²⁷

In Islamic law, there are certain limits prescribed by Allah [*hududullah*] which are imposed on human in order to prevent him from following his own wishes and desires. Allah has clearly mentioned about lawful [*halal*] and unlawful [*haram*], virtues and vices. These are limits [*hudud*] which every Muslim must respect and obey, and if he transgressed any of these limits, he is doing wrong or committing a crime.²⁸ These limits [*hudud*] are to be sanctioned by Islamic law or Shari'ah, and that is why it is called as *hudud* law.

Apart from giving a man a sense of responsibility to Allah as well as to the entire mankind, these limits [*hudud*] will safeguard the rights of man in all aspects of life. Therefore, Islamic law will ensure and safeguard the wellbeing of people. For example, to safeguard the lineage of people, Islamic law clearly provides the punishments for adultery [*zina*]. The Qur'an mentions:²⁹ do not come nearer to adultery or zina for it is shameful deed and an evil, opening the road to other evils.

it is no doubt that adultery is a great sin, and if it is allowed to happen, it may disrupt the social fabric of the Ummah. For this reason, severe punishment is reserved for adultery. Allah says:³⁰

The adulteress and adulterer flog each one of them with a hundred stripes.

1.5 Rules of Professional Ethics for Lawyers in Islamic Law

Generally, ethics may be classified into general ethics and ethics in court whereby the former refers to duty of Lawyers to behave accordingly in their daily life, the latter refers to the behavior in the process of carrying out justice and fair play in court.³¹ For instance, general ethics requires each Lawyer not to be influenced by others, not to involve in bribery, to cautious of litigants and to encourage reconciliation. In court, the Lawyer shall remain calm, not to be influenced by those around him, to give equal treatment, to avoid lengthy proceedings, be punctual, and accord due respect to witness. Even though, many Muslims jurists refer to all of these ethics to be observed primarily by judges, it is submitted that they are also applicable to Lawyers. Therefore, in discussing the

²⁷ Ibid.

²⁸ See hadith No. 6 of Al-Arba'unnan Nawawi reported by Imam Bukhari and Muslim

²⁹ Qur'an 17:32 Translated by Saheeh international Al-muntada Al-Islamic 2013

³⁰ Qur'an 24:2 Translated by Saheeh international (supra)

³¹ Zulkill H. Ethical Principles of Lawyers in Islam op.cit p.6.

ethical principles of lawyers, this work focuses on several provisions of Rules of Professional Ethics as provided in the Islamic Law and Ethics, the Legal Practitioners Act of 2007 and the Rules of Professional Conduct consisting of ethics to observe good behavior and conduct with candor, courtesy and fairness, to acquire knowledge duty of diligence and competence, to uphold interest of client, justice and dignity of the profession, not to appear for party represented by another lawyer, duty of disclosure, to observe confidentiality and to charge reasonable and proper fees.³² On these issues, Justice Kayode Esso stated that:³³

1. A Lawyer shall never be rude, insolent or insulting to Court.

The above commandments however, imports respect to judges but not a commandment for Lawyers to fear judges or be intimidated by them. This is because part of the qualities a judge expects from an advocate is:³⁴

- i. Simplicity of presentation i.e. lucidness.
- ii. Selectivity i.e. ability to separate the relevant from the irrelevant.
- iii. Straight forwardness- ability to go straight to the point. Avoiding being garrulous.
- iv. Brevity.
- v. Candor (Court detest deceitful Counsel)
- vi. Resilience (ability to argue with conviction)
- vii. Proper presentation.
- viii. Courage but not recklessness.

2. A judge shall never be rude even as a result of, or over sensitive remarks made about or against him in the Court, in this respect, it is ethics of the legal profession that insults are better treated with disdain. The legal practitioner's duty to the court is higher and more important than his duty to his client.³⁵

It is very important that as agent, Muslim Lawyers perform their duties in accordance with certain norms or code of ethics. If judges are required to adhere to certain code of ethics, the lawyers also must uphold their standard code of

³² Ibid.

³³ Ibrahim. A, "Ethics, Rules of Professional conduct and Discipline of Lawyers in Nigeria: An over view." International Journal of Public Administration and Management Research vol.4 No.1(2017) available at <http://www.remss.com> accessed in 14/8/2019

³⁴ Ibid. 31 Rules of professional conduct for legal practitioners 2007

³⁵ Ibid.

conduct as embedded in the Qur'an and Sunnah as well as in the provisions of Rules of Professional Conduct for Legal Practitioners.³⁶

Islam mentioned clearly one of the basic ethical principles of Lawyers in the famous Hadith narrated by Ummu Salma where the Prophet said:³⁷

I am only a human being and you people have disputes. May be someone amongst you can present his case in a more eloquent and convincing manner than the other, and I give my judgement in his favor according to what I hear. Beware! If ever I give (by error) somebody something of his brother's right then he should not take it as I have only, given him a piece of fire.

The hadith lays down the principles of advocacy in court whereby a judge heavily relies on the arguments and submissions made by the disputing parties or their representatives. In this aspect, Lawyers must be truthful and honest in conducting cases in court both by their arguments and as well as the way and manner of bringing out evidence.³⁸

1.5.1 Good Behaviour and Conduct with Condor, Courtesy and Fairness

The obligation to observe good behavior is extremely encouraged in Islam. Abdallah ibn Amir said; the Prophet was reported to have said: The best of you are those who have the best excellent morals.

In another Hadith narrated by Abu Huraira, the Messenger of Allah said; The most perfect of the believers in faith is the best of them in moral excellent and the best of you are the kindest of you to their wives.³⁹

Muadh ibn Jabal reported that the Prophet said: Fear Allah wherever you may be, follow up an evil deed by a good one which will wipe (the former) out and behave good-naturedly to people.

The following are some of the things Lawyers are to avoid in practice.⁴⁰

³⁶ Ibid. 31 Rules of professional conduct for legal practitioners 2007

³⁷ Sahih Al-Bukhari Hadith No.97 volume 9 Makatabatul Islamic Al Ilectroniah Al shamilah

³⁸ Zulkifli Hassan op.cit. at p.6.

³⁹ Muhammad Ali, A manual of Hadith, chapter 30: Ethics Lahore, Pakistan (1944).

⁴⁰ Yahya ibn. Al-Nawawi (2000) text, 'Translated and Notes: Imam Nawawi's collection of Forty Hadith p.35.

1. Never take briefs that are against your faith as Islamic ethics provides that Lawyers shall observe good behavior, attitude and character in carrying out his duty to his client.

Rules of professional conduct provides for the general responsibility of a Lawyer towards his client as follows:

A Lawyer shall uphold and observe the rule of Law, promote and foster the cause of justice, maintain a high standard of professional conduct and shall not engage in any conduct which is unbecoming of a legal practitioner.⁴¹

As regards the relationship with other Lawyers, the Rules of Professional Conduct mandates Lawyers to respect their fellow members in the profession by treating them with respect, fairness, consideration and dignity, and shall not allow any ill-feelings between opposing clients to influence his conduct and demeanor towards one another or towards the opposing client.⁴²

This is actually in line with Islamic teaching of promoting a sense of brotherhood. Abu Huraira reported that the Prophet said:⁴³

The younger one should offer salutation to the older one, and the one going along to the one who is sitting, and the smaller group to the larger group.⁴⁴

This Hadith signifies that Islam really encourage Muslims to observe courtesy as it mirrors the individuals character or *akhlaq*. In this regard, the Lawyers shall show respect and courtesy to other Solicitors so as to inculcate and build good image and reputation to the profession.

1.5.2 Duty of Diligence and Competence

It is the duty of Lawyers to represent their clients with diligence and competence. The Rule of Professional Conduct provides that Lawyers shall observe their duties in representing clients diligently. It provides thus: "It is the duty of a Lawyer to devote his attention, energy and expertise to the service of his client and, subject to any rule of law to act in a matter consistent with the best interest of client."

The Rules also provide that a Lawyer should ensure competent while representing his clients. It provides thus:

⁴¹ Rule 1 of the Rules of Professional Conduct for legal practitioners 2007.

⁴² See R.26 of Rules of Professional Conduct.

⁴³ Ahmad ibn Ali Hajar al-asqalamop.cit at p.659.

⁴⁴ Rules 14(1) of the Rules of Professional Conduct for legal practitioners 2007

A Lawyer shall not (a) handle a legal matter which he knows or ought to know that he is not competent to handle without associating with him a Lawyer who is competent to handle it.

Islamic Law shows more concerns on the quality of service delivery as the Prophet (SAW) was reported to have said: "Allah loves to see one's job done at the level of *Itqan* (perfection) or wisdom".⁴⁵

In another Hadith Aisha reported that the Prophet said: "The deed most loved by Allah (are those) done regularly, even if they are small".⁴⁶

These two traditions of the Prophet (SAW) demonstrate the Islamic ethical principles on the duty of diligence and competence. Lawyers are expected to improve their standard of service to the utmost and it should be maintained constantly so as to avoid any occurrence of professional negligence which would harm the interest of clients.

1.5.3 Duty not to Appear for a Party Being Represented by Another Lawyer

The Rules of professional conduct for legal practitioners provides that: "A Lawyer shall observe good faith and fairness in dealing with other Lawyers." Lawyers shall treat one another with respect, fairness, consideration and dignity and shall not allow any ill-feeling between opposing clients to influence their conduct and demeanor towards one another or towards the opposing clients. And where a Lawyer is aware, or ought to reasonably be aware, that a person is already represented by another Lawyer in a particular matter, he shall not have any dealing with that person in respect of the same matter without giving prior notice to the other Lawyer. The Lawyer accepting the instruction shall use his best endeavors to ensure that all the fees due to the other Lawyer in the matter are paid.⁴⁷

The purpose of this provision of the Rules is to maintain fairness and just practice amongst the practitioners.

The Rules of professional conduct is in total agreement with Islamic ethical principles because Islam prohibit any element of monopoly or domination and unfair competition. The Prophet was reported to have said:

⁴⁵ See Muhammad Jamaludin al-Qasim (2006), *Maw'izat al-Mukmininkaulalumpur*. DarulFajir p.385

⁴⁶ Bukhari and Muslim.

⁴⁷ Rule 39 of Rules of professional conduct 2007.

Do not hate one another and do not be jealous of one another and do not boy-cot one another, and be servants of Allah (AS) brethren's and it is not lawful for a Muslim that he should sever his relations with his brother for more than three (3) days.⁴⁸

Although, the client is free to seek legal advice from any Lawyer but the Lawyer owe a duty of fairness and courtesy to his fellow colleagues. If any Lawyer still wants to represent the client of another Lawyer, he then must obtain consent from the other Lawyer.

1.5.4 Duty of Disclosure

Rule 17 of the Rules of Professional Conduct⁴⁹ requires a Lawyer at the time of his being retained to disclose to the clients all circumstances of his relation to the parties and any interest in connection with the controversy which may influence the client in the selection of counsel. Lawyers are responsible to uphold the truth no matter even if it is against himself or his parent or relatives or rich or poor. If a Lawyer has a personal knowledge that his client is a wrong party, he shall not make false claims as it is against ethical principles.

The above provision of the Rules of Professional Conduct is in *pari material* with the Islamic ethical practice. Abdullah reported that the Messenger of Allah said:

Truthfulness leads to righteousness, and righteousness lead to paradise. And a man keeps on telling the truth until he becomes a truthful person. Falsehood lead to al-fujur (i.e. wickedness, evil doing) and al-fujur (wickedness) leads to the Hell fire and a man may keep on telling lies till he is written before Allah, a liar.⁵⁰

1.5.5 Duty not to Accept Briefs that are Against the Islamic Faith

The cab 'rank rule which was developed in England stipulates as a duty for a lawyer to accept any brief in a field in which he professes himself competent to practice, at a court which he normally appears and at the usual rate of his

⁴⁸ Ibn. Hajar al-as-qalamop.cit p.590.

⁴⁹ See Rule 17 of Rules of Professional Conduct.s

⁵⁰ Sahih al-Bukhari. Vol.8 Hadith No.116.

professional fee. Rules of Professional Conduct is in *pari materia* with this where it provides thus:

It is the duty of a lawyer to accept any brief in the court in which he professes to practice provided the proper professional fee is offered unless there are special circumstances which justify his refusal.⁵¹

Unfortunately, the rules did not define what amounts to special circumstances, although refusal on religious ground has been identified by many as amounting to a special circumstance. The reality however, is that Muslim Lawyers working under Federal, and State Ministries of Justice or under senior lawyers may not have the right to turn down briefs assigned to them that affect their religious beliefs and as such they may end up proceeding with such briefs not minding the spiritual consequences this would cause for their faith.⁵²

1.5.6 Avoid Hypocrisy in Practice

Hypocrisy is the stock-in-trade of many lawyers and unfortunately, Muslim lawyers are not exception. It is a common practice for lawyers to argue positions or make submission they do not even believe in, in order to wind their cases in court.⁵³ This is clearly a case of *Nifaq* (Hypocrisy) that Muslim lawyers must avoid because of its divine consequences and it is unethical. There are warnings in the *Qur'an* and *Sunnah* on the status of hypocrites and their abode. Allah say: "Verily, the hypocrites will be in the lowest depth (grade) of the hell-fire, no helper will you find for them."⁵⁴

Spiritually, it is not permitted in Islam to advance arguments contrary to one's actual belief. If one says what is different from what is one's real opinion or what is in one's mind this becomes *Nifaq* (hypocrisy). *Nifaq* is one of the great sins in Islam.⁵⁵ This is one major departure from the common law position. In Islam, a submission by counsel which differs from what he believes to be correct may fall into realm of *Nifaq* whereas the common law is only interested in the argument submitted by counsel and not in his personal opinion. Thus in the common law, it is perfectly proper to advance arguments which one does not believe in so long as one does not mislead the court on facts.⁵⁶

⁵¹ See Rule 24 of the Rules of Professional Conduct for Legal Practitioners 2007.

⁵² Abdul-Razaq A.A. "Let your salvation become the price for Practicing Law" Op cit. P. 3.

⁵³ Ibid

⁵⁴ Annisaa Qur'an 4:145

⁵⁵ Abdulmumini A.O. "Lawyers, Legal Education and Sharia Courts in Nigeria.

⁵⁶ Ibid

1.5.7 Acquiring Professional Knowledge and Experience in Law

The Rule of Professional Conduct for Legal Practitioners is unique in many respect and innovative rules have been made. The rules succeeded in encouraging the acquisition of legal professional knowledge and experience through the requirement for any legal practitioner who wishes to practice to satisfy the requirement of mandatory Continuing Professional Development (CPD) programme organized by the Nigerian Bar Association such as; attendance and participation in accredited courses, lectures, seminars, workshops, conferences on law approved by NBA, writing in law either in books or journals or newspapers approved by NBA, studies towards professional qualification and other approved means of acquiring legal professional knowledge and experience. In all these credit hours are allotted.⁵⁷

In Islam, seeking knowledge is a duty of every Muslim as *Anas* reported that Prophet said: “The seeking of knowledge is obligatory upon every Muslim in fact, Islam elevates and acknowledges the one who has knowledge over the worshiper.”⁵⁸

It is reported by *Abu Dauda* and *Tirmidith*, that the prophet said: “An *Aalim* (Learned Person in the *deen*) is as much superior to an *abid* (worshiper) as the full moon is superior to all stars.”⁵⁹

In another Hadith, *Anas* said, the messenger of *Allah* said: “He who goes forth in search for knowledge is in the way of Allah till he returns.”⁶⁰

The above Traditions precisely support the provisions of Rules of Professional Conduct in making it mandatory for every practicing lawyer to continuously acquire knowledge.⁶¹

1.5.8 Avoid Technicalities in Handling Legal Matters

It has been the norm for many lawyers to rely on technicalities in a matter to achieve a favorable judgment or ruling. The Supreme Court in *Osareren V. Federal Republic of Nigeria (F'RN)* held that:⁶²

Technicality could arise if a party is relying on abstract or inordinate legalism to becloud or drown the merits of

⁵⁷ See Rule 11 of the Rules of professional Conduct 2007

⁵⁸ See Saheehul Buhari (Supra)

⁵⁹ Saheehul Bukhari (supra)

⁶⁰ See Al-Arba'una Annawawi

⁶¹ Zulkiff II. Ethical Principles of Lawyers in Islam. Op.cit. P. 7

⁶² (2018) 10 NWLR (Pt. 1627) 221 @ 226 Ratio 12.

a case. In other words, it arises when a party relies on or holds tenaciously unto the rules of court with little or no regard on the justice of the matter. As far as such party is concerned, the rules must be followed to the last sentence, the last word and the last letter. The party emphasizing technicality has little or no regard to the justice that would be sacrificed or the injustice that would be caused to the opponent.

Islamic law is so simple and straight forward that all one needs to do to prove or defend a case can be explained to litigants by the judge in a matter of minutes. Technicalities have no place under Islamic Law, Islamic Law, as pointed earlier does not allow for opinions and arguments where the law is clear, and the law is virtually clear on almost everything. In the rare instances permitted, only opinions of unbiased disinterested, pious and learned jurists are relevant.⁶³ Islamic injunctions cannot be subjected to partisan distortion or arguments. Islamic Law does not admit arguments *hil'rayi* (sheer reasoning and rationalism) in matters of law. Most matters of law are very clear.

1.5.9 Uphold Dignity and Interest of Justice and the Profession

Rule of professional conducts provides that a lawyers is an officer of the court and accordingly, he shall not do any act or conduct himself in a manner that may obstruct, delay or adversely affect the administration of justice.⁶⁴ A lawyer shall always treat the court with respect, dignity and honor.⁶⁵

Rules of professional conduct mandates legal practitioners to conducts themselves with due courtesy to the court before which they are appearing. And to also Uphold the interest of their clients, the interest of justice and dignity of the profession. These two provisions require lawyers to balance among the interest of the client, justice and the dignity of the profession. The duty to protect the client interest however, shall be balanced with the needs to uphold justice and therefore, the act of hiding facts and evidence to protect the guilty client is clearly unethical and against professional ethics.⁶⁶

These provisions are in line with the Hadith reported by *Anas* that the Prophet said:

⁶³ Abdulmumin A.O. Lawyers, legal Education and Sharia Courts Op.cit O. 139

⁶⁴ Ibid

⁶⁵ See Rule 30 of the rules of professional conduct.

⁶⁶ Zulkiful H. ethical principles of lawyers in Islam DP.CIT.p10

help your brother whether he is the doer of wrong, or wrong is done to him. They (his companions) said: O! Messenger of Allah! We can help a man to whom wrong is done, but how could we help him when he is the doer of wrong? He said: take hold of his hands from doing wrong.⁶⁷

This Hadith revealed that Islam acknowledges the lawyer's duty to defense and protect rights and interest of his client. At the same time this fiduciary duty must be carried out in accordance with the *sharia* rules and principles without neglecting the duty of the lawyers to uphold justice. Thus, lawyers shall not be selective of their clients and they must be ready to accept a brief without payment if circumstances demand so as part of their social responsibilities.

1.6 Conclusion

From the foregoing analyses, it is obvious to conclude that ethics are defined as what is right or wrong. Several theories define ethics based on different standard. Every theory has a single view point with regard to ethical issues such as action, character, religion or culture. The western concepts and understanding of ethics are from the analysis of this paper, is incomplete in explaining what is right and what is wrong. In contrast, Islam has a comprehensive perspective regarding the ethical issues because the Law giver for all systems, including the ethical system is Allah S.W.T, who knows everything and what is best for all human beings. Ethics in Islam are defined as the good principles and values based on the Islamic sources. The Islamic sources are the only standard for identify what is right and is wrong. The Islamic ethics and Islamic sources have different characteristic that makes the Islamic perspective more appropriate to explain ethics. These characteristics are all inconclusiveness, realism and balance. Ethics in Islam are consistent with the ability of human beings and they cover all aspect of life.

⁶⁷ See Sahihul Bukhari Vol. 9 Darul Islam Publication.