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## **BIBLICAL INSIGHTS INTO LEGAL ETHICS**

by

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## **1.0 INTRODUCTION**

Ethics has been defined as a code or principles by which men live. Professional ethics concerns the moral issues that arise because of the specialist knowledge that professionals attain, and how the use of this knowledge should be governed when providing a service to the public. Thus, most professions have internally enforced codes of practice that members of the profession must follow to prevent exploitation of the client and preserve the integrity of the profession. This is not only to the benefit of the client but to the benefit of those belonging to the profession. An example of such a profession is the Legal profession. Lawyers are saddled with the responsibility of putting law in motion and guiding it in motion in its operation in human society. The need for interlink between biblical ethics and professional demands has necessitated this writing. This paper seeks to examine the details of this interplay and to examine the rules of professional ethics in Law through the eye of the Bible with the view of highlighting the role that the Christian faith can play in assisting a legal practitioner to strictly abide by these rules.

### **1.1 STATEMENT OF PROBLEM**

Fred, a property owner, sued Paul, his tenant for recovery of premises having failed to pay rent due for one year. Fred engaged the services of Toriola & Co who assure him of prolonged adjournment as a ploy to remain in the premises for one year with a firm assurance that the Court usually has a long cause list and further that it takes time to secure a date for hearing (usually three adjournments) and that he will thereafter ask the Court to give time to seek alternative accommodation elsewhere which is usually six

months, giving all the parameters, Mr. Paul may eventually live in the house for the next one year free of charge, subject to payment of his legal fees.

This case study is an example of one out of so many instances of abuse of court rules through what is known as ‘sharp practice’<sup>1</sup> or frivolous adjournment in order to cause undue delay and then occasion a miscarriage of justice.

The 1995 trial of O. J. Simpson, an actor, sportscaster and professional football player in the United States, accused of murdering his former wife and her friend, cast unprecedented scrutiny on the criminal justice system and left many people wondering whether truth or justice play any role in its operation. Each day for over a year the trial was televised in the homes of millions of people, most of whom had never seen the inside of a courtroom. They were fascinated and repelled by prosecutors and defense attorneys who argued relentlessly about seemingly trivial points. Even more disturbing to some viewers was the acrimonious name-calling that went on between the two sides as each attempted to discredit the other’s evidence and witnesses.

The question that readily comes to mind is why do some lawyers subvert the rules of court which has been made for proper administration of justice to occasion injustice through frivolous adjournments? Why do we have instances of (some) legal practitioner failing to uphold the law? Why do some lawyers repress personal impressions of what is true or fair in deference to their client’s interests and instructions? Why do we have instances of concealment of facts or non-disclosure of conflicting interests? These and

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<sup>1</sup> This is a coinage for a smart way of behaviour with intention to overreach or take advantage of the other person or the system in operation.

many other questions engage the mind of a Christian lawyer to whom Godliness is the only solid foundation for true dignity.

## **1.2 PURPOSE/OBJECTIVES OF STUDY**

The aim of this paper is to bring the standard of God's revealed truth to bear on legal ethics through a clearer understanding of biblical principles and a courageous application of God's truth to them. The specific objectives shall include:

- a) To identify the relevance of biblical principles to legal ethics and explore how legal ethics can be inculcated in students through a deeper understanding of biblical principles.
- b) To identify effective mode of conveying legal ethics as a subject through moot and mock trial preparatory classes with a view of imbibing biblical principles.

## **1.3 DEFINITION OF TERMS**

The word 'professional' has been defined by the Blacks Law Dictionary<sup>2</sup> "as a person who belongs to a learned profession or whose occupation requires a high level of training and proficiency" while the word 'legal ethics' has been defined as the minimum standard of appropriate conduct within the legal profession, involving the duties that its members owe one another, their clients and the courts"<sup>3</sup>. 'Insight' means a penetrating

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<sup>2</sup> Page 1246, Bryan A. Garner, 8<sup>th</sup> Edition, West Publishing Company

<sup>3</sup> Page 913, *ibid*.

understanding as of a complex situation or problem or the ability to perceive clearly or deeply the inner nature of things<sup>4</sup>.

## **2.0 ORIGIN OF ETHICS AND ETHICS DEFINED**

The etymological basis of the word 'ethic' is the Greek word *ethos*, meaning habitual or customary conduct. Ethics has traditionally been considered a branch of philosophy which seeks to address questions about morality such as what the fundamental semantic, ontological and epistemic nature of ethics or morality is (meta ethics), how moral value should be determined (normative ethics), how a moral outcome can be achieved in specific situations (applied ethics), how moral capacity or moral agency develops and what its nature is (moral psychology) and what moral values people actually abide by (descriptive ethics).

The distinctive feature of ethics is that it is based on human reason and consensus; it is relative to time and place and to what works. This has made protestant theologian like Brunner to dismiss philosophical systems of ethics and to conclude that "although each contains some elements of truth, each also has its own special defects and filled with contradictions which arises out of man's sinfulness". (Gardner,1960).

## **2.1 MORALITY AND RELIGION**

Ethics deals with what is morally right or wrong. From the 5<sup>th</sup> to the 15<sup>th</sup> centuries, Ethics was based on a mixture of God's law and human tradition<sup>5</sup>. Today, there

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<sup>4</sup> *Collins Essential English Dictionary* 2<sup>nd</sup> Edition, 2006, Happercollins Publishers, 2004,2006.

<sup>5</sup> Page 2, *Adventist Education and the Challenge of Postmodernism*, being a paper presented by Humberto M. Rasi, 40<sup>th</sup> Seminar on Integration of Faith and Learning, Mission College, Muak Lek, Thailand, July, 2009

is a conflicting view on whether ethics is an essential part of religion. The definition of religion is elusive to both scholars and lawmakers. But, to the common man, religion ought to have a primary concern with moral conduct, with setting norms for behavior. Wiles .J in **BAXTER Vs LANGLEY**<sup>6</sup> defines religion generally “as what a man honestly believes in and approves of and thinks it his duty to inculcate in others whether with regard to this world or the next”. Religion so defined has since prehistoric times played a significant role in all aspects of human life. It gives man the basis for moral decision and value. Moral precepts and ethical awareness can hardly develop in a faithless state of mind nor can they penetrate to the consciousness of men and women without the essential theological beliefs within which they are framed. Faith generates ethical awareness by bringing clarity to a vision that sees personal and public welfare as organically intertwined. It is worthy of note that embedded in the immutable laws governing the universe, life, and our own evolution is the immutable will of the infinite intellect. To know his will and to follow it is divine wisdom. The fear of God is still the beginning of moral wisdom society needs.

## 2.2 LEGAL ETHICS

A lawyer as a member of the legal profession is a representative of clients, a minister in the temple of justice and a public citizen having special responsibility for the quality of justice. The professional standard that sets out the ethics of the legal profession

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<sup>6</sup> 1868 38 LJMC 1,5 referred to in pg.7 *The Fundamentals to Religion by Paul C. Ananaba*, Seralfred Publications, Lagos. 1999.

in Nigeria is contained in the Rules of Professional Conduct in the Legal Profession<sup>7</sup>, it provides (amongst others) that a lawyer should

- Be competent, prompt and diligent in all professional functions<sup>8</sup>
- Never show marked attention or unusual hospitality to a judge and avoid anything calculated to gain or having the appearance of gaining special personal consideration or favor from a judge<sup>9</sup>
- Neither knowingly misquote the contents of a paper, the testimony of a witness, nor mislead his opponent by concealing or withholding in his opening argument positions upon which his side intends to rely, in other words, the conduct of the lawyer before the Court and with other lawyers should be characterized by candor and fairness<sup>10</sup> to do otherwise is unprofessional and dishonorable.
- Not to represent adverse or conflicting interests except by express consent of all concerned, given after a full disclosure of the facts<sup>11</sup>
- Give a candid opinion of the merits and probable result of pending or contemplated litigation and beware of bold and confident assurances to clients, especially where the employment may depend upon such assurance, whenever the controversy will admit of fair settlement, the client should be advised to avoid or end the litigation<sup>12</sup>

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<sup>7</sup> Cap. 207, *Laws of the Federation*, 1990.

<sup>8</sup> Rule 1, *ibid.*

<sup>9</sup> Rules 2 and 3, *ibid.*

<sup>10</sup> Rule 4, *ibid.*

<sup>11</sup> Rule 10, *ibid.*

<sup>12</sup> Rule 12, *ibid.*

- Perform within the bounds of the law and not violate any law or engage in any manner of fraud or chicanery. He must obey his own conscience and not that of his client<sup>13</sup>
- Strive at all time to uphold the honor and maintain the dignity of the profession but also to improve the law and the administration of justice<sup>14</sup>
- Must decline to conduct a civil cause or to make a defense when convinced that it is intended merely to harass or injure the opposite party or to work oppression or wrong<sup>15</sup>
- Bound to uphold the law; and no service or advice ought to be rendered or given by them to clients involving disloyalty to the law<sup>16</sup>
- Use his best effort to restrain and to prevent his client from improprieties<sup>17</sup>
- Owe entire devotion to the interest of his client, warm zeal in the maintenance and defense of the client's rights and the exertion of his utmost learning and ability to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty and that the great trust of the lawyer is to be performed within and not without the bounds of the law<sup>18</sup>

The rules do not however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by

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<sup>13</sup> Rule 14, *ibid*

<sup>14</sup> Rule 21, *ibid*

<sup>15</sup> Rule 22, *ibid*

<sup>16</sup> Rule 24, *ibid*

<sup>17</sup> Rule 15, *ibid*

<sup>18</sup> Rule 14, *ibid*



legal rules. The rules simply provide a framework for the ethical practice of law<sup>19</sup>, a framework for standards of conduct befitting of a noble profession. The question is – how far has the rules been able to achieve this? The answer to this question is found in the fallacies of legal ethics.

### 2.3 THE FALLACIES OF LEGAL ETHICS

The fallacy of legal ethics is evident in the declaration of Geoffrey Hazard and William Hodes<sup>20</sup> in the leading treatise on legal ethics when he said, “the law of lawyering imposes a clear and mandatory favoritism when a lawyer must choose between the interests of clients and non-clients.” This requires lawyers to promote beliefs in others that they themselves (properly) reject as false.

The genetic structure of adversary advocacy, which is the overprotection of client’s interest at whatever cost, was addressed by Daniel Markovits<sup>21</sup>, to solve this problem he proposes a wholesale renovation of legal ethics and identify *fidelity* as its organizing ideal. Unlike the ordinary loyalty, fidelity requires lawyers to repress their personal judgments concerning the truth and justice of their client’s claims. However, an ethically profound interest in integrity gives lawyers reason to resist this negative characterization of their conduct. He proposed that the ethics of role can in principle preserve the lawyer’s integrity against the threats of the vices of adversary advocacy.

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<sup>19</sup> *Model Rules of Professional Conduct* culled from <http://www.abanet.com>

<sup>20</sup> Geoffrey C. Hazard Jr. & W. William Hodes, *The Law of Lawyering, A handbook on the Modern Rules of Professional conduct*, S.1.3;106 of 75n.1.

<sup>21</sup> *A Modern Legal Ethics, Adversary Advocacy in a Democratic Age*, Princeton University Press, 2008.

Two English law professors, Donald Nicholson and Julian Webb in their book<sup>22</sup> survey the major legal ethics issues facing barristers and solicitors in England and Wales. The authors argue that a serious crisis of morale afflicts the legal professions. They blame this crisis not only on obvious economic and institutional pressures, but also on certain philosophical ideas that underlie common law legal ethics traditions. Nicholson and Webb are centrally concerned with a question over which many leading progressive legal ethics scholars have long pondered: How can the practice of law be both noble and a benefit to society? Within the realm of traditional theories, Nicholson and Webb call for an increased focus on virtue ethics, especially in a greater emphasis on developing moral character and situated practical judgment, in place of a detached technical education about a set of prescriptive rules.

An appraisal of the approach of the above mentioned legal luminaries fails to answer the question of how to maintain the standards of conduct prescribed by the rules. It is my humble submission that for there to be an increase focus on virtue ethics as proposed by Nicholson and Webb or have “an ethically profound interest in integrity sufficient to resist” the negative characterization of lawyerly conduct, a heart transplant must take place. It takes a converted heart to stand true to any prescriptive code of conduct. Virtue as we all know is in-built, it is a gift from “...God the father of light with whom there is neither variableness nor shadow of turning” James 1:17.

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<sup>22</sup> page 292 Donald Nicholson & Julian Webb, *Professional Legal Ethics Critical Interrogations*, Oxford University Press, 1999.

The nobility of the legal profession and that of the Christian calling has great similarity. Like Paul, my admonition to members of the legal profession is “...to walk worthy of the vocation wherewith ye are called”.

## 2.4 BIBLICAL PRINCIPLES HIGHLIGHTING LEGAL ETHICS

The Bible is the basis of ethics. As put succinctly by Ellen G. White<sup>23</sup> the science of holiness, the ethics that the gospel inculcates acknowledge no standard but the perfection of God’s mind, God’s will”. Christian faith demands the “transformation of the mind”. Faith does not abrogate mind or reason, but transforms it so that human mind can function with the assistance of divine enlightening<sup>24</sup>.

An understanding of ethics begins with the knowledge that God exists and has revealed himself to the human race through the Bible (Psalm 119: 2 Timothy 3:16), through the person of Jesus Christ (John 10:30; Heb. 1:1-4) through nature (Psalm 19; Romans 1) and in human conscience (Romans 2:14-15). Divine revelation found in the canonical scriptures of the Old and New Testament constitutes “the bottom line” of the decision-making process. Biblical norms are absolute and if well understood and followed one shall “be free indeed” John 8:36.

The biblical teaching concerning the *image of God* is germane to a better understanding of the duty of lawyer to his client. Genesis 1:26 gave us an insight into the fact that we are all created in the image of God. We are persons equipped by God with rational, moral and artistic powers to invest for our maker... We have God-given, God-preserved, God-restorable potential, a potential to be developed, disciplined and invested

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<sup>23</sup> Page 108.2, *Our High Calling* (1961).

<sup>24</sup> Page 2, *The Adventist Worldview: A Ground to Stand, A life to live*, presented by Dr. John M. Fowler, 40<sup>th</sup> International Seminar on Integration of Faith and Learning, Muak Lek, Thailand, July 2009.

in response to God<sup>25</sup>. David in Psalm 139: 13-16 contemplated the origin of his life and confessed that God was there forming him in the womb. That God made us in his own image reminds us that in a vast universe that reflects God's glory, humans are uniquely "crowned with glory and honor". A deeper understanding of this fact enables us to see persons in proper relationship to their maker, determines the value we place on others and our relationship with them and ultimately determines our destiny. A deeper understanding of this fact also enables a lawyer to conform to the requirements of legal ethics both in professional service to clients and in the lawyer's business and personal affairs. We are responsible agents in every relationship, whether with other people or the physical world of which we are part of or with God Himself<sup>26</sup>.

According to Plato and other biblical writers<sup>27</sup>, the pursuit of *truth* carries with it certain moral prerequisites, the willingness and determination to learn, intellectual honesty, a self discipline that makes lesser and more selfish satisfaction wait. The rules of professional conduct in the legal profession requires the lawyer to be truthful in the presentation of his case and not to knowingly misquote the contents of a paper, the testimony of a witness, the language or the argument of opposing counsel and further that he should not promote a case which to his knowledge is false, in other words, he should be *truthful*. My experience in practice has revealed the contrary; to many legal practitioners a strict adherence to legal ethics will not make one to excel in legal practice. Counsel will today do everything possible to win a case by hook or by crook. To be truthful is to have the spirit of God within. The concept in many Christian homes that one cannot be a good lawyer and a good Christian is very wrong. A Christian is the most

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<sup>25</sup> Page 15, Arthur f. Holmes, *The Idea of a Christian College*, Wm.B Eerdsmans Publishing Co.

<sup>26</sup> Page 33, *ibid*.

<sup>27</sup> page 17, *ibid*.

qualified person to practice law. A Christian will owe his conscience to God and not to man and will be truthful in every transaction. Truth is ultimately unified in and derived from God. The understanding of the biblical truth that God is the truth and that as the all-wise creator he has perfect knowledge of everything we ever sought to know, do or think will ultimately result in the realization that “Lying lips are an abomination to the Lord but they that deal truly are his delight Proverbs 12:22” This knowledge and understanding is indeed a prerequisite to strictly abiding by the rules of professional conduct in the legal profession.

God’s character as expressed in the Decalogue is the ultimate standard of right and wrong. *Love* is the summary of all laws. Jesus Himself highlighted love as the most important commandment in Mark 12:19-31 when He said “Hear, O Israel, the Lord our God the Lord is one. Love the Lord your God with all your heart and with all your soul and with all your mind and with all your strength. The second is this ‘Love your neighbor as yourself. There is no commandment greater than these”. If we love others and treat them with equal regard, then we will be applying a foundational aspect of justice to them 1 John 4:16 “... God is love and he that dwelleth in love dwelleth in God and God in him”. Ethical awareness demands a lifestyle of love as the basis of God’s character and function thus at the root of every choice, every action that one takes is *love*. Love is the dynamic that propels, the catalyst that transforms thought into action without which a lawyer cannot act with dignity and candor. Without it a lawyer cannot discharge without fear or favor his duty to the Court and to his colleagues.

The primary emphasis in the New Testament is on *personal ethics*<sup>28</sup> which has its root in a personal relationship with Jesus. Jesus in Mathew 5:21-28 taught that “anyone

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<sup>28</sup> Page 23 *Christian Ethics in Plain Language* by Kerby Anderson, 2005

who is angry with his brother is guilty of murder” “anyone who looks at a woman lustfully is guilty of adultery” thereby revealing that moral obedience goes beyond our actions by focusing on our motives “...for the Lord is a God of knowledge and by Him actions are weighed” II Samuel 2:3. Ultimately, making moral choices involves discernment of the will of God in one’s life. Once discerned it becomes innate and natural, an inner voice takes over saying ‘this is the way walk in it’. Without being told it becomes natural to avoid conflict of interest in handling client’s cases, the duty to preserve confidential information even at the risk of one’s life is no longer burdensome; full disclosure of proprietary and pecuniary interest in a case comes naturally without being compelled to do so.

The Law enjoins members of its professional body as an officer of the court charged with the duty of aiding the administration of justice to be *candid and fair*, and to give candid opinion on the merit and probable result of pending or contemplated litigation, not to set out false claims in defense of questionable transactions and must also decline to undertake unjustifiable litigation. Lawyers are duty bound to uphold the law, like Jesus who ‘came not to abolish the law but to fulfill it’ Mathew 5:17. According to Ellen G. White “...fairness and candid judgment and mildness are the essence of Christianity and the neglect of this wounds our redeemer and brings a reproach to the course of God”<sup>29</sup>. Thus any service or advice that encourages disloyalty to the law should not be rendered to anyone.

*Fairness and justice* is another moral foundation of the Bible. “Those who practice injustice and oppression set at naught the authority of God and declare by their actions that they have no regard for the word of Christ who has purchased redemption at

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<sup>29</sup> Pamphlets, PH 043, The Judgement, 1879at 37.

infinite cost. Men should remember that no matter what customs have prevailed, no matter what laws have been brought into existence; the great lawgiver is to be obeyed. God's law is to hold the supreme place, and is not made void by maxims, customs and inventions of men"<sup>30</sup> All goodness, justice, love and mercy come ultimately from God. Paul in Ephesians 4:8 encourages us to think on whatsoever things are pure, whatsoever things are honest, whatsoever things are just, whatsoever things are lovely, and whatsoever things are of good report. The Bible records that God is a just God and the Lord of hosts condemned injustice and unfairness in Isaiah 10:1-2; Isaiah 5:23, he further pronounce woes on "scribes... that have omitted the weightier matters of the law, judgment, mercy and faith..."Mathew 23:23 and admonishes us to "have a good conscience" and conduct ourselves "honorably in every way" (Hebrew 13:18) thereby maintaining 'a blameless conscience both before God and men' (Acts 24:16). An in-depth understanding of this biblical principle without a doubt will go a long way to promote fairness and justice in most Courtrooms all over the world.

### **3.0 CONVEYANCE OF LEGAL ETHICS THROUGH BIBLICAL PRINCIPLES**

The need to convey legal ethics through biblical principles was borne out of the desire to provide a pre-career education that will penetrate the thought pattern of law students with Christian beliefs and values thereby training the mind of the students to be an advocate of truth, compassion, love, fairness and justice in their workplace and as true representative of God's kingdom wherever they find themselves.

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<sup>30</sup> Page 7, *Rule in the fear of God*, Review and Herald, 1, 1895.

The work of an educator is to cultivate the mind of the students that the Lord has entrusted into his/her care for “the mind is the Lord’s garden and man must cultivate it earnestly in order to form a character after the divine similitude”<sup>31</sup>. The best way to cultivate the mind of the student is through explicit teaching of biblical principles that constitute the truth evidenced in the scripture. According to Ellen G. White<sup>32</sup>, “there is nothing that will so refine and elevate the character and give vigor to every faculty, as the continual exercise of the mind to grasp and comprehend weighty and important truths”.

In teaching that the lawyer should be truthful in the presentation of his case and not to knowingly misquote the content of a paper, the testimony of a witness nor promote a cause which to his knowledge is false, we educate that God is truth and if one surrenders to Him He will sanctify us by His truth for His word is truth. John 17:17.

In teaching that a lawyer should act with candor and dignity in the presentation of his case and discharge his duty to the Court and his colleagues without fear or favor, we educate that we should love one another for Love is the summary of all laws. Mark 12:19.

In teaching that a lawyer should avoid conflict of interest in handling client’s case and preserve confidential information, we educate a personal relationship with Jesus as a prerequisite to the acquisition of ethics that the gospel inculcates – the ethic which ‘...acknowledges no standard but the perfection of God’s mind, God’s will’.

In teaching that a lawyer should be fair and impartial in the presentation of his client’s case we educate that what God requires of us is “...to do justice, love mercy and walk humbly with the Lord” Micah 6:8.

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<sup>31</sup> Page 106.7, *ibid.*

<sup>32</sup> *Our High Calling*, Chapter 100, 106 at paragraph 5.



In teaching that a lawyer is duty bound to *uphold the law*, we educate that Christ came not to abolish the law but to fulfill it and that “...through faith in Christ obedience to every principle of the law is made possible”<sup>33</sup>.

In teaching that a lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance we educate that whoever we can assist is our neighbor and we encourage students to join *legal aid clinics* where legal services are rendered free to the indigent in the society thereby preparing them for act of selfless service in the future.

The conveyance of legal ethics through biblical principles can only take place when educators live it out. For this to happen “Christ must be blended with all our thoughts, all our feelings, our affections, He must be exemplified in the minutest details of every day service in the work that He has given us to do. When in the place of leaning upon human understanding or conforming to worldly maxims we sit at the feet of Jesus ...our self confidence, our strong self will, will be exchanged for a Christ like, submissive teachable spirit”<sup>34</sup>.

Unto him that much is given much is expected. Luke 12:48. It is not enough to emphasize biblical principles during moot and mock trial preparatory classes, it is sufficient if truth, mercy, candor, fairness and justice pervade every aspect of the life of an educator thereby flowing to the learners like a stream of living waters.

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<sup>33</sup> *6.B.C S.D.A Bible Commentary*, Volume 6, (1956)

<sup>34</sup> Ellen G. White, *Our High Calling*, Chapter 93, page 99 at paragraph 4.

#### 4.0 CONCLUSION

An attempt has been made in this paper to examine biblical principles which if one adhered to can assist a legal practitioner to strictly abide by legal ethics. In the past and till now legal sanctions have been employed to enforce compliance with legal ethics. The way out is not only to adopt one or the other of the options proffered by the rules of professional conduct in the legal profession. God is our resource for holy living. A personal relationship with Christ is a prerequisite to a lawful existence, "...for without me ye can do nothing" John 15:5. Biblical faith has both positive and negative terminals. If either is unconnected, the life giving current will not flow thus *nemo dat quod non habet* (no one gives what he does not have). The secret to upholding legal ethics without stress is not based on personal intelligence or disciplined behavior but attitude and the attitude of faith is not passive. True faith is active.

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