

* Chp ⑦ Art of opinion writing.

* Introduction →

A professional opinion is a written statement from an expert that explains their understanding on specific issue.

In business, legal opinions are often given in opinion letters, which assess how a court might rule on a matter but do not guarantee outcomes.

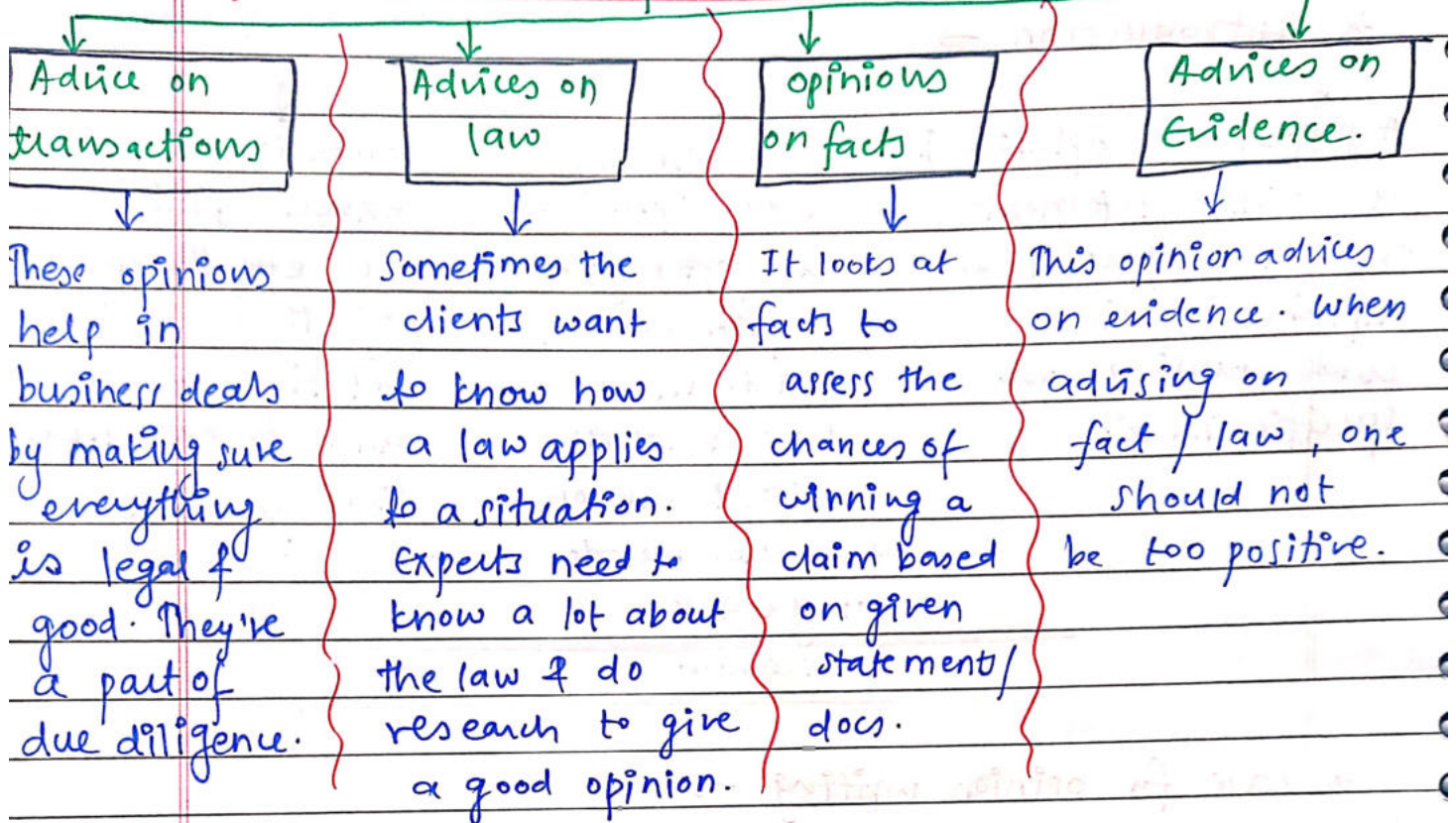
Companies also seek expert opinions on effectiveness of their projects relating to CSR and areas like ESG practices.

* Case for opinion writing →

Here are some of the common reasons why people ask for legal opinions :

- ① lawfulness - opinion letters confirm if an action is legal.
- ② legal outcomes - They help understand possible legal results of a transaction.
- ③ Guidance - client seeks expert advice on complex issues
- ④ legal mandates - some laws require a legal opinion.
- ⑤ Compliance - They help ensure that clients meet the regulatory requirements.
- ⑥ protection - clients use opinions to show lack of intent in legal actions.
- ⑦ Misleading use - Some may gather multiple opinions to back their schemes.
- ⑧ Contract needs - Contracts often require expert opinions
- ⑨ Due diligence - Many request opinions as a part of their business check.

* Types of legal opinions →



* Quality of writing →

- ✓ When writing a legal opinion, it's imp. to use clear and simple language so everyone can understand.
- ✓ Legal opinions often deal with complex facts, so it is important to organise them → clearly
→ logically.
- ✓ Each word should be chosen carefully to convey exact advice.
- ✓ Clients often come with unclear questions, so it is imp. to clarify them before giving advice.
- ✓ Use plain English as much as possible, avoiding old-fashioned / overly technical words.

* Forms & Elements of opinion letter *

Coverage in opinions →Introductory matter

- date
- opinion recipient
- who is giving advice and why?

References

↓
mention the documents & facts reviewed @ decisions of previous cases.

legal conclusions/ qualifications.

↓
main legal points made with any conditions.

Peculiar matter

↓
Anything unique to that opinion, like input from other lawyers.

Signature.

↓
of opinion giver

Forms & Elements of opinions →Introductory matter →

→ It includes:

- Title - It should say "OPINION" and have a case title
- Date - opinion is valid as of date written on it.
- Addressee - It's usually addressed to a specific person / group. Only those mentioned can rely on it, unless otherwise stated.

② Introduction →

In the 1st paragraph of a legal opinion, the expert introduces the main facts and what they have ^{been} asked to advice on. It is important for the expert to clearly understand the questions and frame them properly.

③ **Definitions** → To keep things clear & brief, it is advisable to define imp. terms in a legal opinion.

④ **Understanding facts of case** → In a legal opinion, it is important to carefully consider all $\left. \begin{array}{l} \text{facts} \\ \text{laws} \end{array} \right\}$ involved.

- Only include facts, provided any assumptions made should be clearly stated as personal opinion.

Reliance on certificate of public officials → legal opinions often rely on certificates from public officials, to confirm imp. facts about a company, like its formation & ability to do business.

officer's certificate → In business transactions, opinion preparers often need 2 types of officer's certificate:

certificates to verify docs
(Eg - certificates given by CS)

certificates for factual matters.

Documentary Examination Evidences → When examining documents, opinion givers usually make certain assumptions:

All signatures on docs are genuine.

Copies of docs provided confirm to originals.

Such docs are binding on other parties.

⑤ Research on Relevant case laws → After presenting the facts, the opinion giver analyses the legal aspects. However, laws should be supported by citing relevant authorities, like court cases. The most imp. case laws should be cited first, especially those directly related to the point being discussed.

⑥ Expression of the opinion → once the facts are organised, a legal structure is built to logically fit the facts. The opinion can either summarize conclusions or provide precise answers to specific questions asked. If the argument is clear, the answers may be simple like "Yes" or "No." However, if detailed explanations are needed, it should be concise.

⑦ Qualifications → In practice, opinions often come with qualifications that limit their scope. Qualifications can be short & specific, mentioning them within the main text of the opinion. Typical ways to introduce qualifications are: "subject to" or "except."

⑧ Special matters →

a. Foreign law and reliance on local counsel (lawyer) →

In business transactions, the main opinion giver usually offers an opinion covering the state laws & central laws. If they need to give an opinion on laws from another country, they may seek advice from local counsel. If the opinion giver relies on local counsel's opinion, they should clearly state this in their own opinion.

b. Reliance on opinion of "special" counsel →

Similarly when dealing with specialized legal matters, if a lawyer lacks expertise, they should refer the matter to a specialist. The main opinion giver typically does not provide opinions on specialized matters handled by specialists, as they lack necessary expertise in those fields.

⑨ Signature → most law firms usually have their opinion letters to be manually signed in name of firm.

⑩ Usual disclaimers → Disclaimers in legal opinion can protect the opinion giver from malpractice claims if the opinion is ~~not~~ wrong. It states ^{that} the opinion are based on the law at the time of drafting and on docs / facts provided.

* Things to be kept in mind while preparing for opinions →

① opinions that are not cost effective :

legal opinion givers have to uphold certain standards of skill & care, avoiding misrepresenting the depth of their investigation. This diligence makes opinion letters expensive, even for simple matters.

(b) Inappropriate scope :

In business transactions, certain opinions may be deemed inappropriate if they fall outside the expertise of the opinion giver (or) aren't cost justified

(c) ~~assurances~~ confirmations of fact ; Negative Assurance :

Opinion letters should clearly differentiate b/w legal opinions & other portions. Opinion giver typically avoids confirming purely factual matters

(d) opinions regarding issues of significant legal uncertainty :

Disagreement often arises regarding legal issues with significant uncertainty. If the uncertainty affects only one aspect of the opinion, it can be addressed with a qualification.

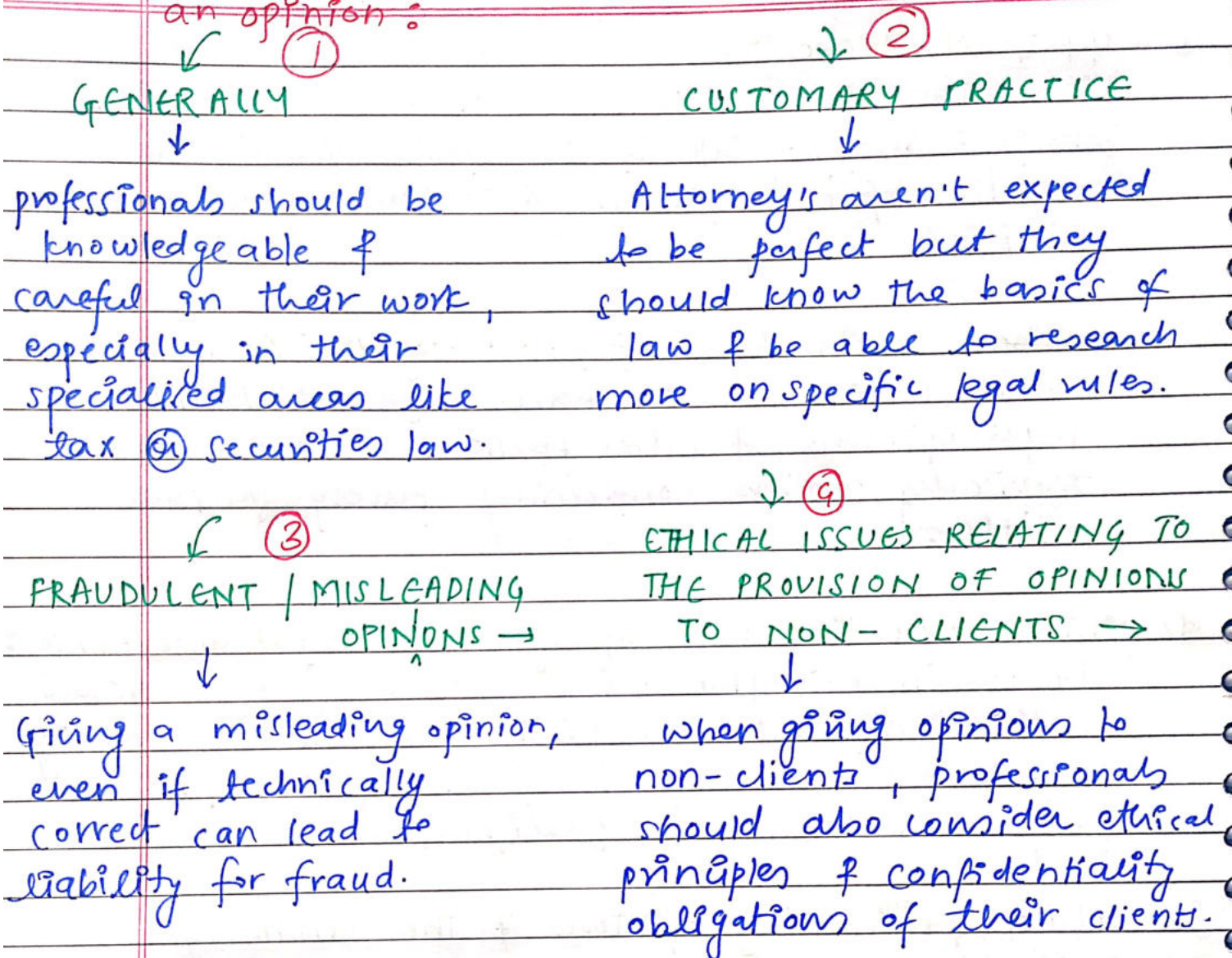
(e) Fraudulent / misleading opinions & the limits of professional competence :

Professionals should not give opinions they know are misleading or based on false assumptions. They should not provide opinions on matters outside their competence.

(f) Time to prepare opinion letters →

Sometimes one may be rushed to give an opinion, due to urgency or client delays. Even then it is imp. not to rush (or) give opinions over the phone. Rushed opinions can lead to mistakes.

* Standards applicable to preparation of an opinion:



* CS Auditing standards on opinion writing → CSAS-3^{ti} applies to auditor conducting audits under any statute.

* process of forming an opinion under CSAS-3 →
Step - (i): Materiality: → The auditor must consider materiality while forming an opinion & follow these principles:

(a) Completeness - Review all relevant audit evidence before issuing a report.

(b) Objectivity - use professional judgement & skepticism.

(c) Timelines - preparing the report in due time.

(d) Contradictory process - verify facts & include responses from relevant parties.

Step (2) : Precedence and Practices : →

The auditor must follow established precedents & practices when forming an opinion.

Step (3) : 3rd party report / opinion →

When forming an opinion based on 3rd party reports / opinion, the Auditor must :

↓	↓	↓	↓
Disclose the use of 3rd party report / opinion & explain why they were necessary.	Disclose if the 3rd party report / opinion was provided by the Auditee.	Consider the significant findings / observations of 3rd party.	Conduct add'n testing if required.

Step (4) : Form an opinion →

- unmodified opinion : The Auditor shall express an unmodified opinion when they find :

compliance with law in terms of timelines & process.

Records are free from misstatements & maintained according to laws.

- Modified opinion : The auditor shall express a modified opinion if they find -

↙ (a)	↓ (b)	↓ (c)	↓ (d)
non-compliance with laws in timelines or process.	Records are not free from mis-statement.	Insufficient advice evidence to conclude that there is compliance with laws.	Insufficient evidence to conclude that records are free from misstatement.

- limitation opinion : If the appointing authority limits the audit scope -

↙ Auditor requests removal of limitation.	↓	↓	↓
	If limitation remains, Auditor informs mgt.	Auditor tries alternative procedure for evidence.	if still insufficient evidence.

Step ⑤ : Auditor's Responsibility →

Auditor report shall include a section with the heading "Auditor's Responsibility" stating that the auditor's responsibility is to express an opinion on compliance with laws & maintainence of records based on audit

Step ⑥ : Format of the Report →

- Report should be addressed to appoing ^{fin} authority.
- Detailed enough to ensure it serves the intended purpose.
- Mention date & place of signing report.

Date:

To [Recipient name / address]

Subject: Can one party appoint sole arbitrator?

1. Not prohibited - The A & C Act, 1996 does not ban one party from appointing a sole arbitrator, but there are important rules.
2. Challenges to appointment - An arbitrator can be challenged if -
 - There are concerns about their impartiality
 - They don't meet the agreed qualifications.
3. Concerns of impartiality - If one party appoints an arbitrator alone, it may raise doubts about fairness, making the appointment likely to be consented in court.
4. SC Decisions - SC has ruled against one-sided appointments of arbitrators, stressing that parties must ensure neutrality.
5. Consent needed - If the arbitration clause allows one party to choose an arbitrator, they should ideally have the other party's agreement. If there is no objection, the appointment may be valid.
6. Eligibility - The arbitrator must meet legal requirements to serve.

Disclaimer - This opinion is ^{for} your use only and should not be shared without consent. It reflects our views as of ~~the~~ today and we are not obligated to update it.

Advice - Ensure appointments are fair and comply with legal standards.

Sincerely,
[Name & signature]

* CASE STUDY 1 *

- Mr. X was acting as a Director on BOD of co., going by name of CSCM private ltd blw 2006 and 2008. Mr. X was also a slh in said company and owns approx. 25.66% eq. shares. He drew a salary of ₹ 1.5 l p.a.
- commⁿ of central tax GST, based on info. received, that CSCM Pvt. Ltd was availing ITC against fake invoices, commenced investigation u/s 67 of CGST Act, 2017 against the company.
- Mr. X, as per the commⁿ, in his statement made to concerned officer, admitted the fact that he had acted as a director of co. blw 2006 - 2008 and since then he has been working in company in capacity of mentor / advisor.
- Furthermore 'X' stated that he drew a salary of ₹ 12 l as mentor for fy - (2019-20) from the company.
- The Bank A/c of Mr. X have also been attached.
- Mr. X has requested to give opinion on said matter.

Date:

To:

On basis of reference received by _____, following questions have been framed for legal opinion:

Question: whether the attachment of Bank A/c of Director is sustainable merely on ground of allegation against the company.

1. Under section 83 of CGST Act, 2017, the commissioner can attach the properties (like Bank A/c) during investigations if it is necessary to protect the govt. revenue.

2. In a related case of Rashni Sana Jaiswal vs. Commⁿ of Central Taxes GST Delhi, Delhi HC stated that a Bank A/c can be attached only if there is a clear evidence linking the individual to wrongdoing, such as involvement of fake invoices. Without this evidence the attachment is considered excessive & invalid.

Conclusion: Given lack of evidence directly connecting to Mr. X to alleged fraud, attachment of his Bank A/c may not hold up legally.

Disclaimer: This opinion is for your use only and cannot be shared without permission. It reflects our views as of today.

Advice: Consider challenging attachment of Bank A/c due to insufficient evidence against Mr. X.

Sincerely,
(Name & signature)

* CASE STUDY (2) *

- A foreign garment brand outsources prodⁿ to a no. of factories in India. Subscribed to the concept of "living wage", the brand wants the factories to pay to its workers some extra allowance so that the workers' cash in hand is more than the min. wages set by the govt. The brand intends to pay to factory this extra amt. but wants all of it to go to workers hand. The Brand has entered into a discussion with its suppliers regarding paying this addⁿ "living wage allowance" on a monthly basis to workers but there was some hesitancy on part of the factories.
- The Brand wants to understand the financial implications of paying this extra allowance to factory and how should Brand move forward in this.

* OPINION *

Date :

To :

on basis of reference received by _____, the following question has been framed for legal opinion :

Question : Why are factories reluctant to pay the "living wage allowance" when Brand wants to fund it ?

1. Factories are concerned about additional costs associated with "living wage allowance" which could raise their financial obligations.
2. If the allowance is considered a part of wages, PF contributions (12%) will increase.
 - ESI is also a percentage of wages, potentially increasing with the allowance
 - Payments for gratuity & bonuses may rise if the allowance is included in salary calculations.
3. The Brand should ensure that the living wage is structured to avoid increasing these costs for factories.
 - paying the allowance quarterly might help it keep outside the definition of "wages" for ESI.
 - offering the allowance only to specific workers can help mitigate classification issues.
4. Recent court rulings have made factories cautious about any new payments that could raise their contributions' responsibilities.
5. Communicate clearly with factories about how the allowance will be structured.
6. Consider legal advice to navigate potential implications.

Disclaimer: This opinion is for your use only and cannot be shared without permission. It reflects our views as of today.

Advice: Structure the living wage allowance carefully to avoid increasing costs for factories.

Sincerely,
(Name & Signature)

{ Note: This is a sample and may not reflect the accurate legal interpretations. }