

KEY CONCEPTS

■ Opinion Writing ■ Introductory Matters ■ Customary Practice ■ Officers' Certificates: ■ Company Secretaries Auditing Standard

Learning Objectives

To understand:

- Different types of Legal opinions
- Points relating to improve Opinion writing
- The matters to be covered in Opinion
- Standards applicable in Opinion Writing
- Opinion writing as per CSAS-3
- The application of opinion writing in practical situations

Lesson Outline

- Introduction
- Case for Opinion Writing
- Types of Legal Opinions
- Quality of Writing
- Form and elements of the Opinion Letter
- Things to be kept in mind while preparing for Opinion
- Standards applicable to Preparation of an Opinion
- Company Secretary Auditing Standard on Opinion Writing
- Sample formats of Opinions
- Case studies on Opinion Writing
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References (including websites/video links)

REGULATORY FRAMEWORK

- Company Secretaries Auditing Standards

INTRODUCTION

A professional opinion on any subject/ issue/ matter at hand is a written statement by an expert based on giver's professional understanding of that particular aspect of any matter. A person might want to know the correct legal position on a matter of interest or the likelihood of his winning a case if he initiates legal proceedings based on the information that he has supplied to the expert. Example, a client (querist) may request a tax opinion from its counsel to provide a basis for the avoidance of penalties, if the tax aspects of a transaction are later challenged.

The term "opinion" can be defined in a variety of ways, depending upon the context in which it is used. In business transactions, a legal opinion regarding a particular issue is customarily presented in an opinion letter and is widely understood to express the opinion giver's professional understanding of the legal principles generally applicable to a specific transaction or applicable to a particular aspect of the transaction. Many commentators view an opinion letter as a document that provides the opinion recipient with the opinion giver's professional judgment about how the highest court of the jurisdiction whose law is being addressed would resolve the issues covered by the opinion letter on the date of the opinion. It is widely recognized that neither an opinion letter nor any particular legal opinion expressed in it is intended to be or is a guarantee of a particular outcome. Companies may also seek opinion from evaluation and monitoring experts on the effectiveness of the projects being funded by its corporate social responsibilities (CSR) obligations under the Companies Act, 2013. ESG is another upcoming area where companies may seek written opinion of outside experts.

CASE FOR OPINION WRITING

An effective and legally sound legal opinion has an immense value. It can show where a party stands in a given factual matrix when looked from a legal perspective and also save time and money spent in futile litigation proceedings. Business savvy clients do not want to litigate, defend or enter into transactions without obtaining a written opinion from at least one legal expert if not more. Some of the common purposes for which legal opinion are sought are as follows:

1. **Lawfulness of an action:** Opinion letters are given when one wants to know if an action is lawful.
2. **Legal consequences:** Sometimes a party entering into a transaction obtains legal opinion to ascertain if the action will lead to desired legal consequences.
3. **Answer questions:** A client may be confused about an issue and they want professional guidance in the area. They also address the question raised by other professionals. Legal opinions provide an authoritative basis for reports, opinions, and reports on matters where other professionals lack the professional capability to make judgments. For example, an opinion regarding local law provided to foreign counsel.
4. **Regulatory requirements:** Sometimes legal opinion has to be sought because it is mandated by law to get the opinion of outside legal expert.
5. **Compliance:** A legal opinion can be sought for assessing the requirements of the regulatory regime so that the querist can meet the compliance requirement.
6. **Protective shield:** Clients sometimes desire the protection of an expert's legal opinion to be used as evidence of lack of *mens rea* in certain proceedings.
7. **Designed to mislead:** Sometimes promoters of unscrupulous schemes obtain as many opinions from different experts as is possible and use the one which is favourable to their scheme of things.

8. **To satisfy contractual requirements:** Sometimes a clause in commercial contracts require the opinion of an expert. E.g.: an opinion given by issuer's counsel to investors in connection with the sale of securities or by borrower's counsel to the lender pursuant to a loan agreement.
9. **Due Diligence:** Professionals and clients often cite due diligence as the principal reason for requesting opinion letters in business transactions.

TYPES OF LEGAL OPINIONS

1. **Advices on Transaction:** Due diligence is the principal reason for opinion letters in business transactions. An opinion letter may be one component of a party's due diligence, but it is not normally a substitute for due diligence performed by the opinion recipient and its counsel.
2. **Advices on Law:** Sometimes the client would want to know how the law will apply to a given situation. Without in-depth knowledge of law and legal research one cannot give an opinion to the satisfaction of the client. The proper way is to start with the cases and work through to reach a deduction as to the principle of law that covers the situation. Quite often however one forms a value judgment as to what the conclusion ought to be from first principles and moral feelings and then searches for the authorities to support this conclusion. This is top down reasoning should be avoided.
3. **Opinions on Facts:** The third type of opinion is one which is predominantly related to facts. One is given a series of statements and documents and asked whether on that material there are reasonable prospects of prosecuting or defending the claim. The matter may be a simple personal injury case in which the law is well settled. The real question is whether one's side's witnesses will be believed or not. The first problem about this sort of opinion is that seldom does one have any real knowledge of what the other side's witnesses are going to say. One often has little idea of the quality of one's own witnesses and none at all of that of the opposition's. Here one has to search relevant material from the material one is provided with and then arrive at the probabilities of success or failure.
4. **Advices on Evidence:** A special type of opinion is a brief to advice on evidence.
When advising on fact or law one should not be too positive. In relation to advices on quantum of damages one can never be sure so it is advisable to not give a precise figure but a range. Where the law is in a state of flux or doubtful the legal expert should always draw attention to this explaining why one cannot be more positive.

QUALITY OF WRITING

The primary purpose of a legal opinion is communication of advice to either a layman or professional client. It is therefore of the utmost importance that it is clear and in plain, understandable English. Every word of the legal opinion should be chosen because it communicates precisely the advice which the writer intends to convey.

It is important to write in plain English wherever possible. A good legal opinion will avoid archaic language and legalese. It will no doubt be conveying specialised legal advice and must therefore be as detailed as the writer thinks necessary. The use of plain English simply involves saying what needs to be said in the clearest way possible and avoiding unnecessary verbosity. There are times where technical terms will have to be used if they carry the precise meaning of the advice being delivered. This should not be shied away from. Perfect grammar, punctuation and precision of language are essential.

A legal opinion will often contain a complicated set of facts which will have to be sorted into specific legal issues and defined in legal terms. Clarity of expression is therefore vital. Clarity of expression can only be achieved through thorough planning and thought.

A thorough plan will lead to a logical structure. Any legal opinion will be conveying a particular point, but that point will inevitably need to be broken down into sections. Clarity of legal writing also requires conciseness. This does not necessarily imply brevity, but once the point has been made, nothing more need be said. Having said that, completeness and total accuracy is vital and conciseness should not come above giving full and precise advice.

Most of the time, the clients approach the expert with an unclear question. So, when drafting the questions, they need to be made more sensible. It must be ensured that the questions are phrased in a way that communicates the client's issues but in a more clear and understandable way.

FORM AND ELEMENTS OF THE OPINION LETTER

Coverage in Opinions

There is no form for a legal opinion prescribed by law or rule. Opinion letters, however, have developed a certain uniformity because of their repeated use. In general, a legal opinion will cover the following:

1. **Introductory Matters:** such as the date, the identity of the opinion recipient, the role of the opinion giver giving the opinion, and the purpose for which the opinion is given.
2. **References:** a general or specific recitation of the documents and other factual and legal matters reviewed by the opinion giver, including in some instances a statement of reliance on various factual assumptions.
3. **Legal Conclusions and Qualification:** the legal conclusions expressed in the opinion, and any qualifications to the legal conclusions.
4. **Peculiar Matter:** matters peculiar to the particular opinion, such as matters relative to opinions of local counsel in other jurisdictions and specific limitations on the use of the opinion.
5. **Signature:** the signature of the opinion giver.

Forms and Elements of Opinion

There is likely to be some resistance to a high fee charged for a short opinion. The work that the legal expert has done may not be obvious and therefore very short legal opinions are rare to find. Therefore, the form and essential elements can be as follows:

1. Introductory Matters

- i. *Title:* It should be entitled OPINION or ADVICE and contain the title of the case in the heading.
- ii. *Date:* The opinion speaks as of the date mentioned on the opinion letter and need not state separately the effective date of the opinion. If for some reason a conclusion expressed in the opinion is reached as of a date prior to the delivery of the opinion, the opinion giver may so specify in the opinion letter.
- iii. *Addressee:* The opinion is normally addressed to a specified party in an individual capacity, to a party as representative of a larger group, or to an identified class of persons. In all cases, it is customary practice for the opinion recipient to be clearly identified in the opinion letter.

Generally, the only person or persons entitled to rely on an opinion are the person or persons to whom the opinion letter is specifically addressed. No additional limitation need be expressed in the opinion letter. As a matter of prudence, however, many professionals include a sentence at the conclusion of the opinion letter to the following effect:

The opinions set forth herein are rendered solely for your use in connection with the above transaction and may not be relied upon, delivered to or quoted by any other person or for any other purpose without our prior written consent.

In some limited instances, an opinion letter is intended to be relied upon by persons other than the stated addressee(s). Examples include an opinion letter addressed to an underwriter concerning the validity of a proposed stock issuance that is also to be relied on by the issuer's transfer agent, and an

opinion letter of local counsel on which the principal opinion giver will rely to render its opinion. In those cases, the opinion letter normally states specifically who, in addition to the addressee, is entitled to rely upon the opinion.

2. Introduction

The first paragraph should serve as an introduction to the legal opinion, laying out the salient facts and what the expert has been asked to advise about. An opinion must set out the questions on which it is sought very clearly and unambiguously. If the Querist (which is what we call a person who seeks the opinion) is himself confused, his questions will be equally mindless. It is your duty as an expert to unravel his tangled skein of thought, identify the issues that are material and on which the relief he wants depends, and then frame them as questions. Of course, these must resemble the original questions, because otherwise the Querist will feel that you have not answered him, however stupid his questions might have been. If the querist is not very clear about the subject matter on which he/she seeks the opinion, then once the expert has formed the queries based on the briefing, it is always advisable to check with the querist if the expert has correctly formed the questions and proceed only after he/she has received a go-ahead from the querist. If it's not done there is a possibility that after the opinion is delivered, the querist might get around and say that the expert did not form the queries as per his briefing. Thankfully, such confused briefings are very rare in this field and most of the times the querist has very specific and precise questions that need to be answered.

3. Definitions

For purposes of brevity and clarity, it is advisable to define the principal terms used in the opinion. Whenever a term utilized in an opinion letter is derived from statutory law, the opinion customarily uses that term or provides an express definition. Terms that are defined in the underlying Agreement are most often given the same definitions in the opinion, either by defining each term in the opinion or by a reference to the Agreement, such as:

The terms used in this opinion letter that are defined in the Agreement have the same definitions when used herein, unless otherwise defined herein.

4. Understanding Facts of the Case

The obligation of an opinion giver to exercise diligence in determining the factual and legal bases for an opinion is implicit in every opinion letter. The first rule is always to commence the opinion by setting out the facts that have been given or have been presumed from the instructions given. Adopting the practice of commencing opinion by outlining the facts upon which one is advising serves another purpose as well. It crystallises those facts in one's mind, visualises any gaps as to which one may need to take further instructions or make assumptions and, where issues of fact are involved, suggests areas which need attention.

Any fact that has not been supplied should not be included in the narration. However, any inference or presumption one has made from the facts must be included and should not forget to mention that the inference or presumptions are his personal opinions. Facts should be stated in a manner which brings out the materials that will become material for answering questions, whether with an "yes" or a "no".

The advantage of listing down the facts is that if the ultimate conclusion is wrong, or inapposite, because the facts are wrong, the fault will be that of the client for giving the wrong data or at least the error may be veiled by the failure of the client or solicitor to adapt opinion to the true facts.

The opinion giver must be satisfied that he has reviewed or assumed (expressly or implicitly) sufficient facts to support each of the legal conclusions expressed in the opinion letter. In case of legal opinion in business transaction, in most instances the opinions in an opinion letter can be supported by an

examination of documents, either in their original form or copies identified to the satisfaction of the opinion preparers, or of certificates of public officials or officers of the Company relating to factual matters.

Some opinion givers preface their opinion letters with a reference to a detailed list of the documents and certificates examined, together with either a statement that they have examined such other documents and have made such further legal and factual investigation as they consider necessary for purposes of rendering the opinion or, alternatively, a specific disclaimer to the effect that they have not made any other examination or factual investigation. Other opinion givers prefer to deliver opinion letters that merely set forth language to the following effect:

We have been furnished with and have examined originals or copies, certified or otherwise identified to our satisfaction, of all such records of the Company, agreements and other instruments, certificates of officers and representatives of the Company, certificates of public officials and other documents as we have considered necessary to provide a basis for the opinions hereinafter expressed. We have not independently established the facts stated therein.

At times, the decision whether to set forth a list of documents and certificates reviewed by the opinion giver is dictated by the opinion recipient. Certain lending institutions and securities underwriters desire the 'long-form' opinion letter containing such a list to provide the additional comfort that the opinion giver has reviewed the listed documents for purposes of its opinion. In most instances, however, the decision is based on the preference of the opinion giver. If the opinion giver intends to limit the scope of the opinion to the documents and certificates listed, it should include an express statement to that effect in the opinion.

a. Reliance on Certificates of Public Officials:

Usually opinions include legal conclusions concerning the corporate nature and existence of the Company and its ability to transact business. They also often include legal conclusions concerning the good standing and ability of the Company to transact business in other jurisdictions. These opinions customarily are based on certificates of public officials in the various jurisdictions involved. The principal certificate among them is the certified copy of the Articles of Incorporation, together with amendments. This certification represents conclusive evidence of the formation of the corporation and *prima facie* evidence of its existence for all purposes.

Certain certificates maybe required from various state agencies. For example, in loans backed by mortgage of immovable property, certificates showing the title to the property may be required. Many states have implemented websites on which such information can be accessed at any time. The information on any particular website can only be relied upon as current to the extent specified by the state agency responsible for that website.

Because certificates of public officials will normally bear a date before the delivery of the opinion, the opinion giver must decide what additional verification, if any, is necessary for purposes of the opinion. Additional verification may or may not be necessary depending upon the facts and circumstances of the case. In general, customary practice does not require that every certificate be updated. Opinion recipients routinely accept opinions that in part are based on certificates of a reasonably recent date.

b. Officers' Certificates:

In business transactions opinion preparers typically obtain two somewhat analogous types of officers' certificates:

- (1) certificates verifying the authenticity of referenced documents; and

- (2) certificates relating to factual matters not readily verifiable by the opinion preparers or only verifiable at considerable cost.

A common example of the first type of certificate is a certificate of the secretary of the Company certifying that, attached to the certificate, is a true copy of the articles, bylaws and corporate minutes or resolutions pertaining to the transaction.

The second type of officers' certificate relates to factual matters not readily verifiable or only verifiable at considerable cost by the opinion giver when preparing the opinion. These certificates are used as factual support for legal conclusions expressed in the opinion. The need for them arises, for example, when an opinion giver renders an opinion that the transaction will not cause a breach of the terms of any loan agreement to which the client is a party. The opinion giver is competent to review the loan agreements but may need an officers' certificate to identify the loan agreements to which the client is a party since, typically, the opinion giver is not in a position to know what agreements to review.

The opinion giver must use its own judgment in determining under what circumstances (and to what extent) reliance on factual matters contained in the certificates can be justified. The opinion giver should also exercise its own judgment in determining those circumstances and matters which reasonably should be supported by an officers' certificate.

c. Documentary Examination Assumptions:

Opinion givers customarily assume that the signatures on all documents examined are genuine, that copies of documents examined conform to the originals, and that such documents are binding on the other parties. Opinion givers often state these assumptions expressly, although by customary usage, they are implicit and need not be expressly stated. If stated, a common formulation of the assumption is as follows:

In rendering this opinion, we have assumed the authenticity of all documents submitted to us as originals; the conformity to originals of all documents submitted to us as copies; and the accuracy, completeness and authenticity of all certificates of public officers.

5. Research on Relevant Case Laws

After the facts are over the opinion giver may begin his analysis on which the opinion depends. There is no need to set out basic principles of law with which the opinion recipient will be familiar. Otherwise, authorities should be cited to support propositions of laws and when doing so a full citation should be given. It is important to prioritise the authorities cited in a legal opinion in order of importance to the point being addressed. If a particular case is central to the reasoning, the basis on which the case was decided should be set out fully in the legal opinion. It may even be appropriate to quote directly from the judgment although often paraphrasing the effect of the decision will usually suffice. The case being cited must always be referred back to the facts being dealt with in the legal opinion. The most authoritative case on the point of law being dealt with must always be cited. For example, there is no point citing a High Court judgment which has been overruled by a subsequent judgement of the Supreme Court.

An easy way of analysing is to first set out the law and the provisions of the law (or laws) that are applicable. Then go on to summarize the binding precedents (judgments of the Supreme Court and the High Court of the State exercising jurisdiction over the subject matter) with full citations. If the choice of extracts is precise enough, the ultimate opinion will almost automatically appear from the extracts of the judgments that have been quoted.

With regard to statute, much of the same advice will apply. If there is a statutory provision which deals

directly with the subject of the legal opinion then this should be clearly stated and its effects fully explained. Care must be taken to ensure that any statutory provision being cited is in force at the time of writing the legal opinion.

In case of business transactions an opinion letter covers only law that a lawyer exercising customary professional diligence would reasonably be expected to recognize as being applicable to the opinion giver's client, the transaction or the Agreement to which the opinion relates.

6. Expression of the Opinion

Once the facts are organized, a legal framework needs to be constructed into which these facts can be logically slotted. A legal opinion in a personal injury action for example will be based on negligence and therefore will usually be structured along the lines of duty, breach, damages, causation, foreseeability and contributory negligence. In a negligence legal opinion it will be vital to assess the level of damages that the client can expect to receive or pay out. This will be at the forefront of the client's mind.

The substantive portion of the opinion normally begins with an introductory statement referring to matters upon which the opinion giver has relied. This introductory statement is generally phrased in a manner that does not limit the opinion giver's investigation to the matters specifically described, but rather indicates that the opinion giver has made such further investigation as it considers appropriate under the circumstances. An example of such an introductory statement reads as follows:

Based on the foregoing and upon such further investigation as we have considered necessary, it is our opinion that:

The opinion can be in the form of summary statement of conclusions or, where a series of discrete questions have been asked, precise answers to the particular questions asked. If the argument has been properly conducted these answers may well be monosyllabic. "Yes", "no", or "does not arise". However, when the monosyllabic answers cannot apply, the answers must be kept short and to the point. Where the querist has asked "Is the transaction a valid mortgage", the answer can be "Yes" or "No", followed by "in view of what has been said in paragraphs such and such of the facts and paragraphs such and such of the analysis". However, where the question is "Why is this not a valid mortgage" the opinion giver cannot answer with 'yes' or 'no' but must explain, though with reference to what has been written in the analysis sections.

7. Qualifications

In practice, opinions are frequently subject to qualifications that narrow their apparent scope. Some opinions may be qualified by assumptions or exceptions. Opinions also may be qualified as to scope, particularly when the opinion covers a specialized area of the law. Qualifications take various forms, depending upon the opinion giver's preference and the length of the qualification. If the qualification is short and applies only to one portion of the opinion letter, it often will be included in the operative language of the specific opinion by the reference "subject to _____" or "except "

If the qualification pertains to more than one portion of the opinion letter or is lengthy, it will usually appear separately from the operative opinion clauses. Typical clauses introducing such qualifications include the following: "our opinion in paragraph _____ is subject to;" or "we express no opinion on the effect of;" or "in rendering our opinion in paragraph we have assumed that."

To simplify the analysis process, number all previous paragraphs. This will relieve you of the burden of repeating previously written information.

8. Special Matters

a. Foreign Law and Reliance on Local Counsel:

The principal opinion giver for a party in a business transaction typically renders an opinion

covering the laws of the state and applicable central laws and sets forth this limitation in the text of the opinion. The opinion giver may also be requested to furnish an opinion on matters governed by the laws of some other country. Unless the limited nature of the review of another jurisdiction's law is described in the opinion, because the opinion giver would likely be held to the same standard as a lawyer licensed or otherwise competent to give advice on the law of the other jurisdiction, the opinion giver will, in most instances, seek the advice and opinion of local counsel.

An opinion giver should, however, always be cognizant of the fact that rendering an opinion based upon legal principles applicable in foreign jurisdictions exposes the opinion giver to liability for a negligent interpretation of that law.

The retention of local counsel to furnish an opinion raises different questions with respect to the principal opinion giver's responsibility for the opinions expressed in the local lawyer's opinion. If the principal opinion giver renders an opinion on the same matters as the local lawyer, the opinion giver customarily expresses its reliance on the local counsel's opinion (an example of recommended language is included below) rather than simply restating the local counsel's opinion in the body of its opinion:

In rendering the opinions expressed in paragraphs, and _____, we have relied [solely] on the opinion of _____, in so far as such opinions relate to the laws of _____, and we have made no independent examination of the laws of that jurisdiction.

When expressly stating reliance on the opinion of local counsel, the principal opinion giver's sole responsibility is to exercise reasonable care in the selection of local counsel (if, in fact, the principal opinion giver selects such counsel). The opinion giver is not responsible for independently investigating or otherwise verifying the law of the foreign jurisdiction. The principal opinion giver may assume a broader responsibility to examine the statutory and case law of the foreign jurisdiction if the principal opinion giver's opinion letter states that the opinion giver "concurs" with the legal opinions provided in the opinion letter of local counsel or that the local counsel's opinion letter is satisfactory in substance. The preferred and more recent common practice is for the local counsel's opinion letter to be addressed to the recipient of the principal opinion letter (rather than to the principal opinion giver) and for the principal opinion giver not to render an opinion on that subject.

b. Reliance on Opinion of 'Special' Counsel:

Considerations similar to those arising in the selection and use of local counsel apply in the retention of special counsel. A lawyer who has no expertise in a specialized matter should not render an opinion in the specialized area, and should refer the matter to a lawyer qualified in that field. The principal opinion giver normally does not furnish an opinion on the same matters as the specialist, even an opinion rendered solely in reliance on the specialist's opinion. The specialist customarily is retained specifically because the principal opinion giver does not have sufficient expertise to render the opinion in question.

9. Signature

The procedure typically followed by most law firms is for the opinion letter to be manually signed in the name of the firm. Some law firms follow different practices, such as "XY&Z by A, a partner" or "A on behalf of XY&Z."

10. Usual disclaimers

Disclaimers can save the opinion giver from being reported for malpractice if the opinion is wrong. Under the disclaimer, it is written that the opinions provided are based on the law as per the time of

drafting the opinion. Moreover, it is also indicated that the opinion is also based on the documents and facts provided. All the documents that the clients provided for the sake of drafting the legal opinion can also be listed.

THINGS TO BE KEPT IN MIND WHILE PREPARING FOR OPINION

Differences between opinion givers and opinion recipients generally arise over:

- (1) the time and expense required to render an opinion on a matter that is peripheral to the primary concerns of the opinion recipient,
- (2) the appropriate scope of a particular opinion,
- (3) whether the opinion will cover matters that are essentially factual in nature,
- (4) whether the opinion will cover matters about which there is some recognized legal uncertainty, and
- (5) requests for what historically were referred to as “comfort opinions” but are more properly referred to as “negative assurances.”

1. Opinions that are not Cost-Effective

Opinion givers are held to certain standards of skill and care in rendering legal opinions. Although the nature and extent of the applicable standards of care are not defined, the opinion giver is obligated to avoid misleading opinion recipients about the scope and depth of any investigation undertaken. Moreover, professionals are responsible for conducting customary legal and factual diligence in rendering legal opinions. For this reason, rendering an opinion letter is a costly process, even in the context of a relatively straightforward matter or business transaction. In determining whether a particular opinion is appropriate under the circumstances and, if so, what the nature and scope of that opinion should be, the opinion giver must consider the costs of giving the opinion relative to the benefits to the client of satisfying the request of the opinion recipient.

2. Inappropriate Scope

In a business transaction a number of opinions would be considered inappropriate because their scope is not reasonably within the competence of the opinion giver or they are not cost-justified. Examples of such opinions include the following:

- i. the client is qualified to do business as a foreign corporation in all jurisdictions in which its property or activities require qualification or in which the failure to qualify would have a material adverse effect on the client;
- ii. the client is not in material violation of any central, state or local law, regulation or administrative ruling; and
- iii. the client is not in material violation of any contract, indenture or undertaking to which it is a party or by which it may be bound.

The common characteristic of these examples is that they are essentially open-ended. Requests for opinions of this sort inherently cast into question whether the party requesting the opinion may be effectively seeking legal “insurance” rather than legal “assurance.” an opinion giver may properly refuse to give such opinions.

3. Confirmations of Fact; Negative Assurance

Opinion givers should take care that the opinion letter makes a clear distinction between those portions that constitute actual opinions on matters of law and other portions (including confirmations of a purely factual nature) that do not.

Opinion givers generally decline to provide confirmations of purely factual matters. Although often characterized as an opinion, these confirmations in essence ask the opinion giver to express a view not founded on professional competence. The function of a legal opinion is to provide informed judgments on matters of law, not assurance regarding factual statements that the parties to a transaction are in a better position to verify. An opinion giver normally should not be asked to state that it lacks knowledge of particular factual matters. Opinion givers generally should not be asked for opinions on the outcome of pending or threatened claims or legal actions.

4. Opinions Regarding Issues of Significant Legal Uncertainty

A fourth common area of disagreement involves legal issues that, although potentially appropriate for inclusion in an opinion, are subject to significant legal uncertainty. If the uncertainty extends only to one of the opinions expressed, the question is frequently resolved by a “qualification” to that opinion. The “qualification” may be a statement that the particular opinion does not cover the effect of a certain law or laws or may identify the uncertainty. Such qualifications are usually acceptable if they relate to demonstrable legal uncertainties.

An opinion giver should not render an unqualified opinion on an issue as to which there is significant uncertainty. If there is disagreement regarding the existence or degree of the legal uncertainty, a compromise is sometimes reached in the form of a “reasoned” opinion. In that situation, the opinion giver does not simply express a legal conclusion but also presents a discussion of relevant statutory and judicial authorities, often (but not always) indicating that the matter is uncertain or “not free from doubt,” and stating a prediction of the likely judicial resolution of the matter if the issue were appropriately presented to a court of competent jurisdiction. By their nature, these opinions can require substantially more time and effort in their preparation than would ordinarily be the case.

Where an issue of legal uncertainty exists, the opinion giver should discuss the matter with its client before agreeing to issue the requested opinion because the opinion may influence the form or even the viability of the business transaction as proposed.

5. Fraudulent or Misleading Opinions and the Limits of Professional Competence

A professional should not render an opinion that he/ she knows would be misleading. In addition, a professional should not render an opinion based on factual assumptions if he/ she knows that the assumptions are false or that reliance on those facts is unreasonable. In addition, a professional should not be asked to render opinions on matters that are outside his or her area of professional competence. Where an opinion is appropriate but beyond the competence of the opinion giver, then the opinion giver should associate competent professional to render the opinion. In no event should a professional be asked for opinions that are generally beyond the professional competence of professionals from that area of practice, such as asking a Professional to express his opinion on financial statement analysis or valuation.

6. The Time to prepare Opinion Letter

Sometimes one may be faced with the necessity of giving an urgent opinion or one when the time is not available to allow one to perform the depth of research one would wish. This may occur because the matter is truly urgent or more often because the client has delayed moving for advice until the last possible moment. In such a case one should qualify the opinion with a disclaimer.

Sometimes the reason for urgency might be of one’s own making. Even in these circumstances one should not make the mistake of giving a half baked, half thought out opinion over the telephone and promising the written advice at a later date. If the opinion giver is wrong not only will he face considerable embarrassment in correcting his informal opinion but if his client has acted on the faith of

it, the opinion giver will have no defence to a claim for damages. Further the desire of opinion giver to make the final opinion accord with his interim one will destroy his objectivity.

Example: Mr. A, comes to you for taking opinion on a matter, which is required to be used in a return to be filled on the next day.

In this scenario, proper due diligence should be done before giving any opinion.

STANDARDS APPLICABLE TO PREPARATION OF AN OPINION

1. Generally

A professional is expected to be well informed and to exercise such skill, prudence and diligence as professionals of ordinary skill and capacity commonly possess and exercise in the performance of the tasks which they undertake. When a matter falls within a recognized area of legal specialty, such as tax or securities law, it is advisable to take that assignment only if it falls within the competence of the professional.

2. Customary Practice

An attorney does not ordinarily guarantee the soundness of his opinions and, accordingly, is not liable for every mistake he may make in his practice. He is expected, however, to possess knowledge of those plain and elementary principles of law which are commonly known by well informed attorneys, and to discover those additional rules of law which, although not commonly known, may readily be found by standard research techniques.

The opinion preparers should devote the time needed to interpret and apply legal principles relevant to the situation at hand, ascertain (through appropriate inquiry and certificates of officers of the Company) the facts that underlie the opinion, and identify areas of significant uncertainty (if any) in the interpretation and application of legal principles. In certain cases, opinion givers may conclude that it is necessary to conduct research with respect to particular legal principles or to conduct an investigation of the underlying facts relevant to the opinion.

3. Fraudulent or Misleading Opinions

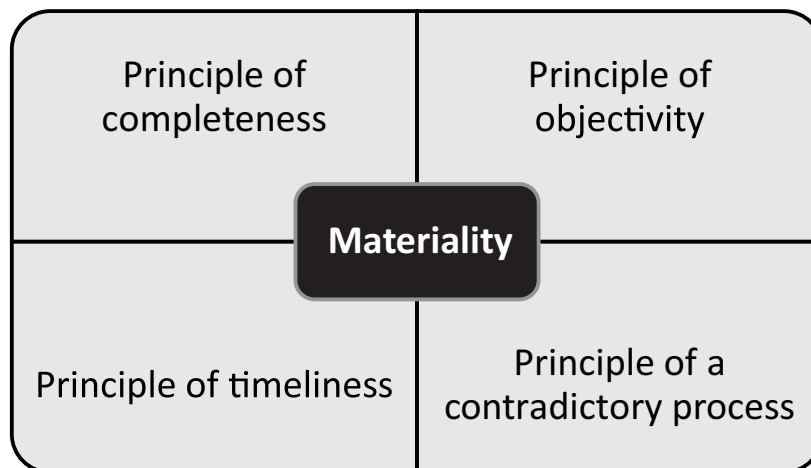
An opinion giver may be liable for an opinion that constitutes fraudulent misrepresentation. A professional owes a duty to non-clients to refrain from fraudulent misrepresentation. It is generally understood that, regardless of compliance with other standards, and even if an opinion is technically correct, a professional should not render an opinion that he recognizes would be misleading to the opinion recipient.

4. Ethical Issues Relating to the Provision of Opinions to Non-clients

A professional delivering an opinion letter to a non-client should also consider ethical principles. For example, rendering an opinion to a non-client may conflict with the opinion giver's ethical obligations to maintain the confidences of its client. He should decline to give legal opinion in such cases.

COMPANY SECRETARY AUDITING STANDARD ON OPINION WRITING

The Company Secretaries Auditing Standard (CSAS-3) is applicable to the Auditor undertaking Audit under any statute. The Standard deals with basis and manner for forming Auditor's opinion on subject matter of the audit. The objective of CSAS-3 is to enable the Auditor to lay down the basis and manner for evaluation of the conclusions drawn from the Audit Evidence obtained and express the opinion through written report.

Process of forming an opinion under CSAS-3**Step 1: Materiality**

The Auditor shall consider Materiality while forming his opinion and adhere to:

- a. The principle of completeness that requires the Auditor to consider all relevant Audit Evidence before issuing a report;
- b. The principle of objectivity that requires the Auditor to apply professional judgment and scepticism in order to ensure that all reports are factually correct and that findings or conclusions are presented in a relevant and appropriate manner.
- c. The principle of timeliness that implies preparing the report in due time; and
- d. The principle of a contradictory process that implies checking the accuracy of facts and incorporating responses from concerned persons.

Note: The Auditor may consider various judgments, clarifications, opinion, conflicting interpretations while framing the opinion to the best of his professional acumen.

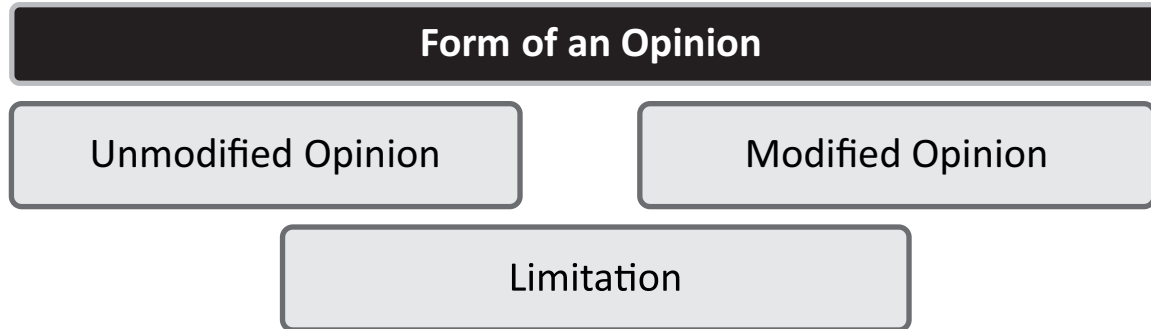
Step 2: Precedence and Practices

The Auditor shall adhere to generally accepted precedence and practices in relation to forming of an opinion as may be available from historical perspective of any kind of audit.

Step 3: Third Party Report or Opinion

The Auditor shall adhere to the following while forming an opinion based on Third Party reports or opinions:

- (a) The Auditor shall indicate the fact of use of Third Party report or opinion and shall also record the circumstances necessitating the use of third party report or opinion;
- (b) The Auditor shall indicate the fact if Third Party report or opinion is provided by the Auditee;
- (c) The Auditor shall consider the important findings/ observation of Third Party;
- (d) The Auditor shall, if necessary and feasible, carry out a supplemental test to check veracity of the Third Party report or opinion.

Step 4: Form of an Opinion**1. Unmodified Opinion**

The Auditor shall express an unmodified opinion when based on Audit Evidence, the Auditor concludes that:

- a. there is due compliance with the applicable laws in terms of timelines and process; and
- b. the Records as relevant for the audit verified by him as a whole are free from Misstatement and maintained in accordance with the applicable laws.

2. Modified Opinion

The Auditor shall express modified opinion when the Auditor concludes that:

- (a) based on the Audit Evidence obtained, there is non-compliance with the applicable laws in terms of timelines or process; or
- (b) based on the Audit Evidence obtained, the Records as a whole are not free from Misstatement; or are not maintained in accordance with applicable laws; or
- (c) he is unable to obtain sufficient and appropriate Audit Evidence to conclude that there is due compliance with the applicable laws in terms of timelines and process; or
- (d) he is unable to obtain sufficient and appropriate Audit Evidence to conclude that the Records as a whole are free from Misstatement; or are maintained in accordance with applicable laws.

Whenever the Auditor expresses a modified opinion or disclaims an opinion, the text of the opinion shall be either in italics or bold letters.

3. Limitation

If, after accepting the Audit Engagement, the Appointing Authority imposes a limitation on the scope of the audit which, in the opinion of the Auditor, is likely to result in the need to express a modified opinion or to disclaim an opinion, the Auditor shall request the Appointing Authority to remove the limitation.

If the Appointing Authority refuses or fails to remove the limitation, the Auditor shall communicate the matter to the Management and determine whether it is possible to perform alternative procedure to obtain sufficient and appropriate Audit Evidence.

If the Auditor is unable to obtain sufficient and appropriate Audit Evidence, the Auditor shall determine the implications as follows:

- a. If the Auditor concludes that the possible effects of unavailable Audit Evidence could be non-material, the Auditor shall modify the opinion; or

- b. If the Auditor concludes that the possible effects of unavailable Audit Evidence could be material, the Auditor shall express disclaimer of opinion.

Step 5: Auditor's Responsibility

The Auditor's Report shall include a section with the heading "Auditor's Responsibility". Auditor's Report shall state that the responsibility of the Auditor is to express opinion on the compliance with the applicable laws and maintenance of records based on audit. The Auditor's Report shall also state that the audit was conducted in accordance with applicable Standards. The Auditor's Report shall also explain that those Standards require that the Auditor comply with statutory and regulatory requirements and plan and perform the audit to obtain reasonable assurance about compliance with applicable laws and maintenance of Records.

Auditor's Report shall also state that due to the inherent limitations of an audit including internal, financial and operating controls, there is an unavoidable risk that some Misstatements or material non-compliances may not be detected, even though the audit is properly planned and performed in accordance with the Standards.

Step 6: Format of the Report

The report shall be addressed to the Appointing Authority unless otherwise specified in the Audit Engagement Letter or provided in the applicable law. The report shall be detailed enough to serve its intended purpose. Where specific formats are prescribed, those formats shall be followed for reporting. If any information cannot be appropriately placed within the paragraphs of the report, it shall be given in form of annexure(s).

Signature block shall mention the name of the audit firm along with the registration number, if any, the name of the Auditor, certificate of practice number, the membership number of the Auditor, specifying whether associate or fellow member, as applicable. The Auditor shall clearly mention date and place of signing the report, in case report is signed by two different persons on different dates or different places; same shall be mentioned in the report.

SAMPLE FORMAT OF OPINIONS

A few sample opinion pieces can give a better understanding of the practical aspects of opinion writing. Professionals have to keep in mind that they need to focus on the structure and the presentation of the opinion and not the opinion per say.

(Note: These are only samples and may not be the correct enunciation of law)

Sample 1

Opinion

Date: _____

To,

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

Question: Is the appointment of a person as a sole arbitrator by one party barred in law even if the same be provided in the arbitration agreement between the parties?

1. The Arbitration and Conciliation Act, 1996 does not bar the appointment of a person as a sole arbitrator by one party. However, it places certain fetters on such appointments and these have further been

elaborated by the Supreme Court and various High Courts in a number of judgments. Having said that, there are still certain areas that need to be ironed out.

2. According to section 12(3) of the Arbitration and Conciliation Act, 1996,

An arbitrator may be challenged only if—

- (a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality,
or
- (b) he does not possess the qualifications agreed to by the parties.

3. Clause (a) of section 12(3) is clear in its language that the appointment of an arbitrator can be challenged if there are circumstances that give rise to justifiable doubts as to his independence or impartiality. Appointment of a sole arbitrator by one of the parties raises justifiable doubts as to the arbitrator's independence or impartiality. Thus the other party can always challenge the appointment of such an arbitrator in Court and the appointment of the arbitrator is most likely to be struck down.
4. The Supreme Court in the matter of *TRF Limited v. Energo Engineering Projects Ltd, (2017) 8 SCC 377* ruled against unilateral appointments of arbitrators and further clarified it in *Perkins Eastman Architects DPC v. HSCC (India) Limited 2019 (9) SCC OnLine SC 1517*, where it held that a party to an arbitration agreement can neither appoint oneself or any other person unilaterally as the sole arbitrator. In both these cases the arbitration clause provided that only the officer at a specified rank or someone nominated by that officer could act as the sole arbitrator.
5. The reason for holding it so is because a person having an interest in the dispute or in the outcome or decision thereof, must not only be ineligible to act as an arbitrator but must also not be eligible to appoint anyone else as an arbitrator and that such person cannot and should not have any role in charting out any course of the dispute resolution by having the power to appoint an arbitrator. In a case where only one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution.
6. If the arbitration clause provides for appointment of sole arbitrator by one of the parties, such arbitrator should be appointed with the consent of the other party. However, if one party appoints a sole arbitrator and the other party does not object to it, it would be considered as a waiver and that appointment would be considered valid. A point to be kept in mind is that such an appointment should not be made by a person who himself is disentitled to act as an arbitrator under the provisions of the Arbitration and Conciliation Act, 1996.

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I advise accordingly.

Sincerely yours,

(Name & signature)

CASE STUDIES ON OPINION WRITING**CASE STUDY 1**

Mr. X was acting as a director on the Board of Directors of a company, going by the name of CSCM Private Ltd., between 2006 and 2008. Mr. X is also a shareholder in the said company, and owns approximately 25.66% equity shares. He drew a salary of Rs. 1.50 Lakh per month.

Commissioner of Central Taxes GST, based on the information received, that CSCM Private Ltd. was availing Input Tax Credit (ITC) against fake/ineligible invoices, commenced investigation, under section 67 of the Central Goods and Services Tax Act, 2017, against CSCM Private Ltd.

Mr. X, as per the commissioner, in her statement made to the concerned officer, inter alia, admitted to the fact that he had acted as a director of the company, between 2006 and 2008, and since then, he has been working in the company in the capacity of a mentor/advisor.

Furthermore, Mr. X is also said to have stated that, it is in her capacity as the mentor/advisor to company, that he received Rs. 18 Lakh in the concerned FY i.e. 2019-2020, from the company. According to Mr. X, this money was given as she had been providing “strategic guidance” to the Company.

The Bank accounts of the Mr. X have also been attached.

Mr. X has requested to give opinion in this matter.

Opinion

Date: _____

To,

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

Question: Whether the attachment of Bank Account of director is sustainable merely on the ground of allegation against Company.

1. Section 83 of the Central Goods and Services Act, 2017

Provisional attachment to protect revenue in certain cases

- (1) *Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the **taxable person** in such manner as may be prescribed.*
- (2) *Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).*

2. The Delhi High Court in the case of Roshni Sana Jaiswal v. Commissioner of Central Taxes GST Delhi (East) W.P.(C) NO. 2348 OF 2021 CM NO. 6860 OF 2021 has inter alia decided as under:

The petitioner claimed, in her voluntary statement, that she was paid Rs. 1.50 crores in the FY 2019-2020 for rendering services in her capacity as a mentor/advisor to Milkfood Ltd. Therefore, even if we assume, for the moment, that, since investigations are on against the taxable person, and therefore, proceedings are pending under section 67 of the Act, there is nothing placed on record to show that there was material available with the respondent, linking the petitioner to purported fake invoices. In other words, in the absence of such material, the impugned action concerning provisional attachment of the petitioner's bank accounts, which is otherwise a "draconian" step, was unsustainable. In the zeal to protect the interest of the revenue, the respondent cannot attach any and every property, including bank accounts of persons, other than the taxable person.

Analysis

In view the above quoted provisions and the case decided by the Hon'ble High Court of Delhi, attachment of the petitioner's bank accounts may be unsustainable

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I advice accordingly.

Sincerely yours,

(Name & Signature)

CASE STUDY 2

A foreign garment brand outsources production to a number of factories in India. Subscribed to the concept of 'Living Wage', the brand wants the factories to pay its workers some extra allowance so that the workers cash in hand is more than minimum wages set by the Government. The Brand intends to pay to factory this extra amount but wants all of it to go into workers hands. The brand had entered into a discussion with its suppliers regarding paying this additional 'Living wage allowance' on a monthly basis to workers but there was some hesitancy on the part of the factories.

The Brand wants to understand the financial implications of paying this extra allowance for the factories and how should the Brand move forward on this.

Opinion

Date: _____

Dear _____

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

Question: What could be the possible reason for factories'/ employers' reluctance to pay the 'Living wage allowance' to its workers when the Company (Querist) will be paying that amount to the factory/ employer?

1. The reluctance of factories to pay additional living wage allowance stems from the increased financial liability for the factories that the Querist did not factor in while coming up with the additional allocation for living wage allowance.
2. To get the employer on board for payment of living wage, the Brand must ensure that the financial burden on the employer does not increase because of the payment of living wage. The financial burden on employer can increase in atleast four ways:
 - a. Through employer's contribution to PF that is currently fixed at 12 percent of basic wages, dearness allowance and retaining allowance.
 - b. Through employer's contribution to ESI that is currently fixed at 3.25 percent of wages.
 - c. Through payment of gratuity that is contingent on last drawn salary/ wages.
 - d. Through payment of bonus that is fixed as a certain per cent of annual salary or wage.
3. Except in rare cases where the employer is willing to bear the additional financial responsibility, the Brand must either ensure that the employer's contributions/ payments remain unchanged. The problem with optimising the payment of additional amount becomes complicated because the contributions of the employer and bonus and gratuity payments by him are dependent on different definitions of wages/ salary. Moreover, in States that have Professional Tax in India, the brand might also want to structure the payment of additional amount so that the employee does not get caught in its net.
4. Provident Fund:

According to section 6 of Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the contribution which shall be paid by the employer to the Fund shall be ten per cent. of the basic wages, dearness allowance and retaining allowance (if any) for the time being payable to each of the employees (whether employed by him directly or by or through a contractor), and the employees' contribution shall be equal to the contribution payable by the employer in respect of him (a proviso empowers the Central Government to increase this contribution to 12 per cent.). Explanation to the section says that for the purposes of this section, dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

Thus the contribution of the employer and the employee is based on basic wages, dearness allowance and retaining allowance and dearness allowance includes cash value of any food concession allowed to the employee.

According to section 2(b) of the Act:

"basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include—

- (i) the cash value of any food concession;
- (ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;
- (iii) any presents made by the employer.

Therefore, the PF contribution is not dependent on house rent allowance, overtime allowance, bonus commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment or any presents made by the employer.

5. Employee's State Insurance:

Under the ESI Act, the contribution to ESIC is fixed as a certain percent of 'wages'.

Section 2(22) of the ESI Act defines wages as:

"wages" means all remuneration paid or payable, in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off and] other additional remuneration, if any, paid at intervals not exceeding two months, but does not include—

- (a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;
- (b) any travelling allowance or the value of any travelling concession;
- (c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
- (d) any gratuity payable on discharge;

The definition of 'wages' under the ESI Act is wide but it excludes any remuneration that is aid at an interval exceeding two months. Therefore, if the living wage allowance is paid at a quarterly frequency, it would keep that amount outside the ambit of wages and no ESI contribution on that extra amount will have to be made.

6. Payment of Gratuity:

The relevant part of the Act says that for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned [section 4(2)].

Section 2(s) defines wages as:

"wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

Thus the definition of wages for the purpose of gratuity is restricted and gives the Brand the freedom to pay living wage allowance without increasing the financial burden on the employer in case the worker retires after the applicable period.

7. Payment of Bonus:

The Payment of Bonus Act requires that a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher must be paid, whether or not the employer has any allocable surplus in the accounting year:

As per section 2(21) of the Act:

"salary or wage" means all remuneration (other than remuneration in respect of over-time work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living), but does not include—

- (i) any other allowance which the employee is for the time being entitled to;

- (ii) *the value of any house accommodation or supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;*
- (iii) *any traveling concession;*
- (iv) *any bonus (including incentive, production and attendance bonus);*
- (v) *any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;*
- (vi) *any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex gratia payment made to him;*
- (vii) *any commission payable to the employee.*

Explanation. – Where an employee is given in lieu of the whole or part of the salary or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purpose of this clause, be deemed to form part of the salary or wage of such employee;

The definition under the Act excludes a number of items and gives Brand the freedom to pay Living Wage allowance without increasing the Bonus Payment by the employer.

8. Any additional payment to workers should be made after considering the above four contributions/ payments by the employer and operating under the presumption that the objective of the whole exercise is to increase payment to workers (so that they achieve 'living wage') without increasing the financial burden on the employer and to avoid incidence of tax on workers through legally permissible means.
9. It must be clear that PF contribution depends on basic wages, dearness allowance and retaining allowance. PF contribution by employers is an additional financial burden for the employers and they try to keep it to the legal minimum. Believing (genuinely or not, is a separate matter) that the definition of 'basic wages' in the PF Act allowed certain allowances to be excluded from the definition of basic wages, the employers started paying workers a number of different allowances like canteen allowance, leave allowance, dress allowance etc. This allowed them to give workers a wage hike without increasing their (or workers') PF contribution. The Government authority that ensures compliance with the PF Act and has wide ranging powers believed that exempting allowances apart from the ones specifically excluded in the definition as per the Act was nothing but an attempt to camouflage basic wage as allowances to avoid PF contribution and initiated action. The matter went to the Courts and was finally settled in the Supreme Court of India in 2019 (*The Regional Provident Fund Commissioner (II) West Bengal vs. Vivekananda Vidyamandir and Others*) which ruled in favour of the PF authority.
10. After the said ruling, the legal position is as follows:
 - a. Those wages which are universally, necessarily and ordinarily paid to all the employees across the board are basic wage.
 - b. Where the payment is available to those who avail the opportunity more than others, the amount paid for that cannot be included in the basic wage.

The second point would cover things like overtime allowance, leave encashment etc.

11. After this ruling by the Supreme Court the proliferation of various types of allowances by employers has stopped. The factories/ employers believe that if living wage allowance is paid to workers under whatever head, for the purpose of PF he will have to consider it as a part of basic wage and consequently its PF contribution will increase.

12. One can still pay an additional amount on a monthly basis and legitimately say that the payment does not fall under point 1 above. For example, paying only those workers that are involved in Brand's production and not across the board (non-universal), or *ex-gratia* (not necessarily) but the downside risk is that if the PF authorities consider it a part of the basic wage, the employer will have to pay the contribution for itself and the workers as well as interest and fine. The other option for the employer would be to challenge the action of the authority in the Courts. Both these scenarios involve additional financial expense on part of the employer and it is likely that the factories/employers are unwilling to take on the additional financial burden.

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I advice accordingly.

Sincerely yours,

(Name & signature)

(Note: These case studies are only samples and may not be the correct enunciation of law)

LESSON ROUND-UP

- A professional opinion on any subject/ issue/ matter at hand is a written statement by an expert based on giver's professional understanding of that particular aspect of any matter. A person might want to know the correct legal position on a matter of interest or the likelihood of his winning a case if he initiates legal proceedings based on the information that he has supplied to the expert.
- There are 4 types of Legal Opinion i.e. (i) Advices on Transaction (ii) Advices on Law (iii) Opinions on Facts (iv) Advices on Evidence
- The primary purpose of a legal opinion is communication of advice to either a layman or professional client. It is therefore of the utmost importance that it is clear and in plain, understandable English. Every word of the legal opinion should be chosen because it communicates precisely the advice which the writer intends to convey.
- Differences between opinion givers and opinion recipients generally arise over (1) the time and expense required to render an opinion on a matter that is peripheral to the primary concerns of the opinion recipient, (2) the appropriate scope of a particular opinion, (3) whether the opinion will cover matters that are essentially factual in nature, (4) whether the opinion will cover matters about which there is some recognized legal uncertainty, and (5) requests for what historically were referred to as "comfort opinions" but are more properly referred to as "negative assurances."
- The objective of CSAS-3 is to enable the Auditor to lay down the basis and manner for evaluation of the conclusions drawn from the Audit Evidence obtained and express the opinion through written report.

GLOSSARY

Opinion: A document that provides the opinion recipient with the opinion giver's professional judgment about how the highest court of the jurisdiction whose law is being addressed would resolve the issues covered by the opinion letter on the date of the opinion

Expression of the Opinion: Once the facts are organised, a legal framework needs to be constructed into which these facts can be logically slotted. A legal opinion in a personal injury action for example will be based on negligence and therefore will usually be structured along the lines of duty, breach, damages, causation, foreseeability and contributory negligence. In a negligence legal opinion it will be vital to assess the level of damages that the client can expect to receive or pay out.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. What are the types of Legal Opinion?
2. Explain Form and Elements of the Opinion Letter?
3. What are the things to be kept in mind while preparing for opinion letter?
4. Define Company Secretaries Auditing Standard (CSAS-3). What is the Process of forming an opinion under CSAS-3?
5. Draft a Specimen on Opinion.

LIST OF FURTHER READINGS

- Chartered Secretary, The ICSI
- Articles written by professionals

OTHER REFERENCES (Including Websites / Video Links)

- <https://www.icsi.edu/home/cs/>
