Legal opinions have been part of the US legal landscape for a long time. Traditionally, commercial contracts stipulate that as a condition to the closing of the transaction the lawyer for one party must give a legal opinion with an agreed upon wording to the other Party. In other words, in the United States legal opinions are typically given not only by a lawyer to his own client but also to the other party with whom the opining lawyer's client enters into a contract. This is the so-called "third-party opinion". This practice is generally justified with the argument that such a lawyer is usually more familiar with the issues covered by the opinion (eg due incorporation, due authorization) and that his opinion reinforces his client's representations.¹

Although a contract might require that a New York and a California lawyer render identical opinions at the closing of the transaction, the meaning of the opinions, although identical on their face, could differ, or the California lawyer could insist on certain qualifications which the New York lawyer viewed as being unacceptable.

This problem led the American Bar Association, Section of Business Law, to undertake an effort towards "the establishment of a national consensus as to the purpose, format and coverage of a third-party legal opinion, the precise meaning of its language and the recognition of certain guidelines for its negotiation".⁵ The result of the effort is the ABA's Legal Opinion Accord.⁶

[Subsequently the author analyses the Accord's practicability regarding international transactions]

¹See Legal Opinions in International Transactions: Foreign Lawyer's Response to US Opinion Requests, Report of Subcommittee E-1 on Legal Opinions of SBL Committee E (Banking Law) of the International Bar Association (2nd edn, 1989) (hereinafter "IBA-Report"), p 5. The validity of this justification of third-party opinions, ie that a party to an agreement is estopped from raising a defence against the validity of such agreement if such defence contradicts an opinion previously delivered by such party's counsel has been seriously questioned at the proceedings of the Subcommittee on Legal Opinions during its session at the IBA's 24th Biennial Conference in Cannes 19th October 1992.


³Supra, note 5.

**Referring Principles:**

VII.5 - Liability for damages for legal opinions