

Development of Third-Party Funding in England & Wales and Contingency Fee Agreements

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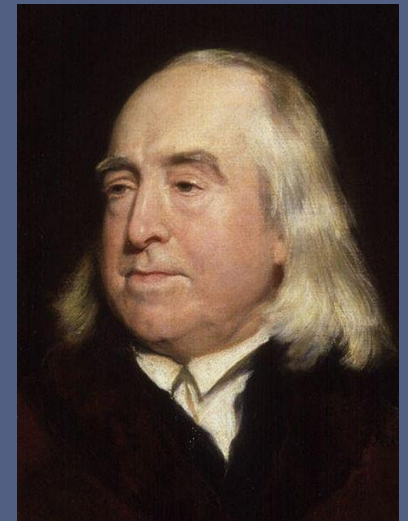




Feudal Barons

Maintenance and Champerty

- Maintenance
 - the support of litigation by unassociated third party 'without just cause or excuse'
- Champerty
 - Contract to fund of litigation by third party in return for a share in the proceeds
 - Champertous agreements unenforceable as a matter of public policy
- Must be an element of 'impropriety'
 - Interference in the conduct of litigation; decision-making power, access to information
 - Disproportionate profit
 - Corruption of justice; inflaming damages, distorting evidence



Third Party Funding Agreements



- Viable money claims viewed as assets
- Fees are payable from proceeds recovered and can be calculated as:
 - A percentage of the amount recovered or
 - A multiple of the funding deployed or
 - A multiple of the funding committed or
 - A combination of any of the above
- If the claim is not successful capital invested can be lost
- ATE insurance covering adverse costs an option

Association of Litigation Funders

- Code of Conduct for Litigation Funders
 - Expressly covers the funding of arbitration
 - Minimum of £2m capital
 - Audited
 - Complaints procedure
- Sets benchmark



Contingency Fee Agreements – Permitted Types

- Conditional Fee Agreements
 - Part or all of solicitors' fee payable only if litigation successful
 - Conditional 'uplift'
 - Client liable for all fees
 - 'Uplift' recoverable from losing side if pre-1 April 2013
- Damage-Based Agreements
 - Pre-defined success criteria
 - Solicitors' fees a percentage of the award
 - Solicitors become litigation funders



Industry Regulation

- Solicitors' Regulation Authority Code of Conduct
 - Must not act where there is a conflict of interest
 - Fee arrangements must be 'legal'
 - Duties of confidentiality and privilege
- Bar Standards Board Code of Conduct
 - 'only propose, or accept, fee arrangements which are legal'
 - Must not act where there is a conflict of interest e.g. temptation for counsel to favour the interests of the funder over those of the client





Thank you!