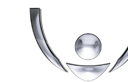
Evolution of Litigation Finance (LF) in US, AUS & UK



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- **Medieval Times** – UK: Legal doctrines established to prevent LF & dissuade perceived frivolous litigation[1]
- **1908** – US: Contingent fee arrangements endorsed by ABA[2]
- US: LF starts evolving through Patent bankruptcy trade claims, civil rights, contingent legal fees, tracking warrants, etc.
- **1967** – UK: Criminal Law Act passed eliminating criminal and civil liability for champerty[3]
- **1968** – UK: Precedent case permanently allowing LF[4]
- **Pre-80s** – AUS: Statutory powers to sell bankruptcy trade claims became generally accepted[5]
- **1992** – US: Counsel Financial established to provide financing for personal injury claims
- **2005** – UK: LF confirmed in landmark challenge[6]
- **2006** – AUS: LF confirmed as acceptable practice in Australia[7]
- **2007** – US: First closed-end fund floated on AIM by Juridica
- **2009** – UK: " Jackson Reforms" established acceptability of LF[8]
- **2010** – US: Burford floats common shares on UK's AIM
- **2012** – AUS: Law enacted preventing regulation of LF[9]
- **2013->** – Private litigation fund managers established globally
- **2017** – US: Burford acquires Gerchen Keller
- **2019** – AUS: IMF Acquires OMNI Bridgeway

[1] Laws were created to protect litigants from "officious intermeddling" and profiting from the sale of legal claims to third parties.
[2] While contingent fee arrangements date back to frontier settlers in the U.S., this had the effect of carving out an important exception from the champerty doctrine. By 1965 the practice had been adopted by all states.
[3] The Act passed by Parliament abolished criminal and civil liability for champerty.
[4] Hill v. Archibold case established that LF is perfectly justifiable and had been active in different ways for many years (i.e. trade unions paying for their employees' litigation).
[5] While solvency cases were initially viewed as an exception to champerty and maintenance concerns, they quickly became the 'thin edge of the wedge' for LF in Australia.

[6] Court of Appeal in Arkin v. Borchard Lines Ltd. case confirmed that litigation finance was an acceptable means of financing lawsuits. Further establishes that a funder is responsible for adverse costs in the amount equivalent to each pound (£) they had invested in the case.
[7] Campbells C & C Pty Ltd. vs. Fostif Pty Ltd.. The High Court of Australia confirmed that it is not contrary to public policy for a funder to finance and control litigation in the expectation of profit and does not amount to an abuse of the court's process.
[8] Sir Rupert Jackson recognizes the need and legality of litigation finance.
[9] The Corporations Amendment Regulation 2012 (No. 6) was made on 12 July 2012, clarifying that LF is not subject to regulatory requirements and is specifically not considered a credit facility. Many industry participants continue to view Australia as the vanguard of the LF industry.