Civil Litigation 2019-2020 12th edition Cunningham-Hill Test Bank

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Correct answers are marked with an asterisk (*)

Type: multiple choice question
Title: Chapter 01-03 - Question 01
01) Which definition most accurately describes a conditional fee arrangement ('CFA')?
***a.** A CFA enables a lawyer to share the risk of the litigation with the client by offering a number of variations of 'no win, limited, or no fee' arrangements.
Feedback: This selection is correct since this is a generic description of a CFA and there are different types which may or may not require some sort of payment from the client in respect of legal costs and/or disbursements. The key is that the risk is shared between the legal representative and the client.
b. A CFA enables clients to select the lawyer who offers them the best option to fund their action.
Feedback: This is inaccurate because a client is not always able to select who represents him (for example trade union or legal expense funded claims) and not all law firms offer any/all types of CFAs.
c. A CFA is available for all clients in litigation and offers more or less risk free litigation for them.
Feedback: This is wholly incorrect as CFAs may not be available for all matters and not all firms offer all types of CFA. Further, the litigation should never be described as risk free due to the likely payment of disbursements by the client as they go along and the interplay of conduct on costs orders and Part 36.
d. A CFA enables the solicitor and the client to enter into a business arrangement that ensures the best possible deal for both.
Feedback: This selection is incorrect since a CFA is a legally binding contract but it may not always be the best option for both parties hence the sharing of the risk.

Type: multiple choice question
Title: Chapter 01-03 - Question 02
02) Which of these do not form part of the CFA? The costs of any action that the client needs to consider could include …
a. their solicitor's costs.
Feedback: This selection is incorrect since these are included in the CFA and form the base costs upon which a success fee is calculated. The CFA will stipulate the conditions when the base costs and/or the success fee are to be payable by the client.
***b.** their opponent's costs.
Feedback: This selection is correct since these do not form any part of the CFA. If the client wants protection against having to pay these then he will need insurance; either BTE or ATE.
c. draftsmans' costs.
Feedback: This choice is incorrect since these are classified as part of the base costs. These are included in the CFA and form the base costs upon which a success fee is calculated. The CFA will stipulate the conditions when the base costs and/or the success fee are to be payable by the client.
d. court fees.
Feedback: This selection is incorrect since most CFAs exclude payment of disbursements. These are usually paid by the client as the case progresses but are also recoverable from the opponent if the client secures a successful costs order. Some firms may have a policy that they will pay all disbursements but this is not the normal practice.
e. Experts' fees.
Feedback: This selection is incorrect since these are disbursements and are usually paid by the client as the case progresses but are also recoverable for the opponent if the client secures a successful costs order. Some firms may have a policy that they will pay all disbursements but this is not the normal practice.
f. Their barristers' fees.
Feedback: This selection is incorrect since these are disbursements and are usually paid by the client as the case progresses but are also recoverable from the opponent if the client

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secures a successful costs order. Some firms may have a policy that they will pay all disbursements but this is not the normal practice. Barristers can also agree to enter into CFAs.

Type: multiple choice question
Title: Chapter 01-03 - Question 03
03) Which statute governs the implementation of CFAs?
***a.** The Courts and Legal Services Act 1990 as amended by s.44 LAPSO 2012.
Feedback: Correct since this is the only surviving statute from the abolition of the conditional fee purge back in November 2005.
b. The Administration of Justice Act 1999.
Feedback: Incorrect since this statute has nothing to do with CFAs.
c. The Conditional Fee Order 2013.
Feedback: This selection is incorrect as this is the only surviving order but it is not a statute.
d. The Senior Courts Act 1981.
Feedback: Incorrect since this has nothing to do with CFAs.

Type: multiple choice question
Title: Chapter 01-03 - Question 04
05) Which is not correct? Where a client has a CFA with a success fee the solicitor should have explained …
a. … the potential liability for his own costs as well as of those of the opponent before the CFA is signed and at regular intervals thereafter.
Feedback: This is one of the obligatory requirements for a solicitor to bring to the attention of his client.
b. … the right to an assessment of costs by the court whenever the solicitor seeks his costs from his client.
Feedback: This is one of the obligatory requirements for a solicitor to bring to the attention of his client.
c. … any interest the solicitor may have in recommending a particular policy or other funding arrangement.
Feedback: This is one of the obligatory requirements for a solicitor to bring to the attention of his client.
d. … that the CFA can be cancelled under circumstances provided in the CFA by the solicitor or the client but if by the client the full success fee may be payable.
Feedback: Each CFA for each firm maybe slightly different but they will all contain provision for cancellation of the agreement.
***e.** … that the success fee is recoverable from the opponent if the client wins and secures a costs order in his favour.
Feedback: This is incorrect as of 1st April 2013. All CFAs with success fees entered into after this date do not permit the client to recover the success from the opponent. They must pay this themselves to their own legal representative.

Type: multiple choice question
Title: Chapter 01-03 – Question 05
06) Which is **not** correct? CFAs can be used when it is appropriate and possible to do so …
a. … between solicitors and their claimant clients.
Feedback: This selection is incorrect since this is the normal arrangement.
b. … between solicitors and their defendant clients.
Feedback: This selection is incorrect since this is the normal arrangement.
***c.** … between solicitors and experts instructed in the action.
Feedback: Correct. This is somewhat of a grey area but it is generally thought that you cannot. In practice experts will defer payment until the outcome but this is not a CFA agreement per se.

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d. … between solicitors and barristers instructed in the action.
Feedback: This selection is incorrect since this is the normal arrangement.

Type: multiple choice question
Title: Chapter 01-03 - Question 06
07) The courts have given guidance on the level of success fee payable by a client in a CFA personal injury action. Which of the following is the correct level of success fee?
a. 25% of base costs.
Feedback: Incorrect. See the CFA 2013 Regs.
b. £35% of the damages awarded.
Feedback: Incorrect. See the CFA 2013 Regs.
c. 100% of base costs.
Feedback: Incorrect. See the CFA 2013 Regs.
d. Any fee is allowable provided it is reasonable and proportionate to the amount recovered
Feedback: Incorrect. See the CFA 2013 Regs.
***e.** Up to 100% of base costs but that figure cannot exceed 25% of the damages awarded excluding future care claims and net of benefits received
Feedback: This selection is correct. See the CFA 2013 Regs.

Type: multiple choice question
Title: Chapter 01-03 - Question 7
08) DBAs are now permitted in civil litigation. Which statement is incorrect?
a. The DBA Regulations 2013 provide for a solicitor's costs to be capped at 25% of the damages recovered in PI claim excluding damages for future care and
Feedback: Incorrect. This is one of the requirements for permissible DBAs
b. The DBA. Regulations provide for a solicitor's costs to be capped at 50% of the sum recovered in all non PI claims excluding employment matters
Feedback: Incorrect. This is one of the requirements for permissible DBAs
***c.** DBAs can be entered into by both claimants and defendant
Feedback: This selection is correct since this is very unlikely to happen as a defendant does not usually recover monies unless they have a substantial counterclaim.
d. Vat is included in the cap but not disbursements save for counsel's fees.
Feedback: Incorrect. This is one of the requirements for permissible DBAs

Type: multiple choice question
Title: Chapter 01-03 - Question 8
09) Assume that a CFA with a success fee has been entered into between a client and his solicitor. Which of the following courses of action is correct?
a. The opponent should be notified of the existence of the CFA with success fee as soon as proceedings have been commenced by sending a copy of the CFA to the opponent.
Feedback: Incorrect. As there is no additional costs burden to the opponent there is no need to notify.
b. If proceedings have already been started the party with the CFA with success fee must notify his opponent by filing and serving Form N251 within 7 days.
Feedback: Incorrect. As there is no additional costs burden to the opponent there is no need to notify.
***c.** As there is no additional costs burden to the opponent there is no need to notify them.
Feedback: Correct.
d. If the CFA with success fee is entered into in the pre-action phase, the opponent should be notified by letter.
Feedback: Incorrect. As there is no additional costs burden to the opponent there is no need to notify.

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Type: multiple choice question
Title: Chapter 01-03 - Question 9
11) Which is correct? The fees of an expert instructed in a case can be one of the most costly disbursements. To alleviate the cost to the firm or the client …
a. … the expert can be asked to enter into a CFA.
Feedback: Incorrect. This will not alleviate the costs to the firm.
b. … the expert can be asked to defer their fee until the conclusion of the case and paid then if the outcome is successful for his instructing party.
Feedback: Incorrect. This is tantamount to a contingency arrangement and may affect the impartiality of the expert.
***c.** … the expert can be asked to defer their fee until the conclusion of the case and be paid then regardless of whether the client has succeeded or not.
Feedback: Correct. This is permissible as the expert's impartiality is not affected.
d. It is not possible to have any form of CFA or deferred fee arrangement with an expert as it would be in breach of SRA Code of Conduct.
Feedback: This is untrue.

Type: multiple choice question
Title: Chapter 01-03 - Question 10
12) Your commercial client entered into a CFA without a success fee prior to the issue of proceedings in his breach of contract claim. Which of the following is correct in terms of the documentation your client is required to file at court on the issue of proceedings?
a. Claim Form, Particulars of Claim and expert's report.
Feedback: Incorrect. An expert's report is only required to be filed when issuing a personal injury claim. See CPR 16 PD 16 para 4.
***b.** Claim Form, Particulars of Claim and court fee.
Feedback: Correct, since CFAs without a success fee, in fact now all CFAs post 2013 do not need to be disclosed by way of N251 and as this is not a PI claim there is no strict requirement to annex expert's report to Particulars of Claim.
c. Claim Form, Particulars of Claim, N251 and court fee.
Feedback: Incorrect. CFAs without a success fee do not need to be disclosed by way of N251.
d. Claim Form, Particulars of Claim, expert's report, N251 and court fee.
Feedback: Incorrect. CFAs without a success fee do not need to be disclosed by way of N251 and as this is not a PI claim there is no strict requirement to annex expert's report to Particulars of Claim.

Type: multiple choice question
Title: Chapter 01-03 - Question 11
13) Which is the most accurate answer? The purpose of a statement of case is to …
a. …enable the parties to see the case they are facing and see the evidence supporting the claimant's case.
Feedback: Incorrect, This is correct as to the first part but not strictly as to the second part – though the signing of a Statement of Truth hopefully ensures parties do tell the truth. You need to consider the **most** accurate of the options.
***b.** … enable the parties to narrow the issues between them and identify the core claims being made.
Feedback: Correct. This is the most accurate of the options in this question. Look at the others carefully.
c. … enable the defendant to know the case he is facing.
Feedback: Incorrect. This is correct but not sufficiently correct. You need to consider the **most** accurate of the options.

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d. … enable the parties to narrow the issues between them and see the strength of the evidence against them.
Feedback: Incorrect. This is correct as to the first part but not strictly as to the second part. You need to consider the **most** accurate of the options.

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