

English Summary

While the Law and Economic literature regarding fee-shifting rules in litigation and their effects on litigants' behaviour and decisions is wide and growing fast it has mainly focused on the analysis of the English Rule and of the American Rule and has failed in recognising the relevance of other rules. The general aim of this thesis is to use and to refine traditional models of civil litigation in an attempt to describe the features and the effects on the litigation process of another type of fee-shifting rule, the One-way fee-shifting Rule. Under the One-way fee-shifting Rule, one party recovers her litigation costs in the event of litigation (the advantaged party) whereas the other party (the disadvantaged one) is not allowed to do so. If the Plaintiff is the advantaged party the rule is known as the Favouring Plaintiff Rule; if the Defendant is the advantaged party the rule is instead known as the Favouring Defendant Rule. While the approach adopted here is based on theoretical model and uses tools derived from Game Theory, the thesis has shown how the results can be exploited to provide valuable policy implications.

It has been shown how the One-way fee-shifting Rule incentivises the favoured litigant to exert more effort than the disadvantaged one and this increases the favoured litigant's probability of winning at trial. When moving from an English system to a One-way fee-shifting one, total litigation costs always decreases while the number of cases that are brought to justice increase. If a settlement stage is out of the picture a higher number of cases that are brought to justice translates into higher litigation rate; otherwise it translates into higher number of cases that are settled. More precisely, the One-way fee-shifting Rule (Favouring Plaintiff) increases the Plaintiff's credibility to sue and this translates into higher settlement rate and settlement amount. A similar result can be achieved with the implementation of legal aid; however legal aid always increases litigation rate and public expenditure.