

Article Summaries

Bungled litigation and costs

Hugh Evans

The Courts purport to take costs into account when valuing bungled litigation. However, in practice they overvalue claims by failing to do so properly. This can be demonstrated by taking a simple example where there is a 50% prospect of success, using some straightforward calculations. Claimants would be expected to do better if conditional fee agreements and ATE insurance are used, particularly in old cases where the CFA uplift and insurance premiums are recoverable from the defendant, and the calculations bear this out. If the prospects of success are 25%, the value of the claim falls dramatically, and in most cases the claim will not in fact have any value.

Causal presumptions and defective products in EU Law

Emmanuelle Lemaire

On 21 June 2017, the ECJ addressed the thorny issue of proof of causation in the context of liability for defective products. Although this decision has been widely criticised, it provides a useful insight into the compatibility of national probatory rules with the European liability regime. The article assesses whether the common criticisms associated with this decision are justified, and more importantly, it explores to what extent, if at all, English law is compatible with the ruling, therefore revealing the core substance of the ECJ's decision.