

## **Abstract**

### **Plaintiff - Defendant Asymmetries?**

#### **The case of pro-plaintiff cost shifting in Israeli trial courts**

Are there asymmetries between plaintiffs and defendants in civil trial courts, such that one side systematically fares better than the other? This paper introduces a novel approach for confronting one aspect of litigant asymmetry by analyzing the interactions between the substantial outcomes of civil cases and the cost-shifting outcomes of the cases. The Israeli fee regime, in which judges are granted full discretion in allocation of costs, presents a unique case study for applying this approach. We analyze an original dataset of 2,000 civil cases that encompass all case disposition possibilities, across a wide range of case and litigant characteristics, thus mitigating some selection bias limitations while enriching the general civil litigation discourse beyond cases adjudicated on the merits. Our findings shows compelling evidence for a pro-plaintiff effect in the courts, such that prevailing plaintiffs are granted more and higher costs than prevailing defendants. This effect can be partially attributed to plaintiffs and defendants exhibiting different cost-requesting behaviors, yet persists when request of costs is held constant. We find no evidence for other explanatory factors and cautiously suggest that there may be an implicit pro-plaintiff bias in effect in the courts. Policy implications and measures are discussed.