האוניברסיטה העברית בירושלים

הפקולטה למדעי החברה

בית הספר ע״ש פדרמן למדיניות ציבורית וממשל

Plaintiff - Defendant Asymmetries?

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

אסימטריה בין תובעים לנתבעים?

יתרון התובע במשטר ההוצאות בישראל

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Abstract

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.

תודות

בראש ובראשונה, ברצוני להודות מקרב לב לד״ר קרן וינשל-מרגל על החניכה, ההנחיה וההכוונה, במהלך כתיבת התזה והרבה מעבר לכך. תודה על המקצועיות, הסבלנות והמסירות אין קץ, על השעות הרבות והמרתקות יחדיו, על שדחפת אותי קדימה ועל שהענקת לי מחדוות היצירה והכתיבה. תודה על היותך מנטורית במלוא מובן המילה!

תודה גדולה נתונה גם למשפחתי, להורים שלי ולחמי וחמותי, על שעודדתם, תמכתם ואפשרתם לאורך כל הדרך.

תודה מיוחדת לאיתמר שלי - על הכול. וליואב שלנו, על היותו הוא.

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I. Introduction

Are there asymmetries between plaintiffs and defendants in civil trial courts, such that one side systematically fares better than the other?

A general expectation from a balanced and fair civil justice system is that litigants be treated equally, based on the merits of their case (Genn, 2010). Broadly speaking, this entails the following premises: First, that litigants facing court proceedings should be equally capable of accessing the courts and of producing their evidence. Second, that litigants during the proceedings should be beholden equally to the same sets of rules and be accorded equivalent procedural opportunities. Third, there should be equality in the outcomes of the case, in that like cases reach like results.[1] The need for addressing inequalities is quite straightforward when discussed in the contexts of individual litigant characteristics such as resources, ethnic backgrounds or gender. Conversely, there may be asymmetries between litigants that are not a result of differing characteristics but derive from the ways in which legal rules and doctrines evolve and adapt in the day-to-day realities of the courtroom. Such imbalances also need to be addressed by legal policymakers, provided they cannot be satisfactorily justified, but first they need to be identified and defined (Partington, 2010).

The goal of this study is, therefore, to identify systemic asymmetries that may exist between litigants that arise primarily from their roles as plaintiffs and defendants. It should be noted that some structural and procedural differences between litigants are common in civil adversarial systems due to the inherent fact that the plaintiff is the initiator of the claim. Thus, for example, the plaintiff generally carries the burden of proof and is usually required to establish her claim by a preponderance of the evidence (the burden may be shifted as the proceedings move forward). Various procedural rules derive from this basic principle, such that for example the plaintiff is commonly the first to present evidence, and has the right to make the first and final closing arguments. That being said, this research focuses on more general, underlying disparities between plaintiffs and defendants.

[1] Based on the typology of Rubenstein (2002) and adopted by Rosen-Zvi (2015), by which there should be equipage equality, rule equality, and outcome equality in civil procedure.

Identifying plaintiff-defendant asymmetries has proven difficult. Research analyzing case-outcome data can assist in shedding light on how litigants fare in the courts, but is limited by selection biases and by a lack of a meaningful reference point to which the data can be compared (this is because we cannot know which litigant should win a case). More recently, research that compares between appeal win rates and trial win rates provides a relevant baseline for comparison but is fraught with selection effects. This study introduces a new approach for studying litigant asymmetries. We utilize the full discretion granted to judges in the Israeli cost-shifting regime in order to analyze two comparable outcomes of civil cases - the substantial outcome (who prevailed) and the cost-shifting outcome. The actual winning rates comprise a baseline against which the cost-shifting rates are set. By using a unique dataset that includes all possibilities of case dispositions, across a wide range of case and litigant characteristics, we are able to mitigate most selection biases. A main limitation of this approach is that only a specific and somewhat limited dimension of plaintiff-defendant asymmetry is explored.

We find compelling evidence for a pro-plaintiff effect in the courts, amongst all civil cases. There is a substantially higher tendency to shift costs in favor of prevailing plaintiffs (in 81.1% of the cases) than in favor of prevailing defendants (in 21.8% of the cases). Among cases in which costs are shifted, the amounts allocated to plaintiffs are significantly higher than those allocated to defendants - 23.45% of the sum of the claim for prevailing plaintiffs, as compared to 11.42% of the sum of the claim for prevailing defendants. Inferential analysis of alternative explanations for the pro-plaintiff effect shows that potentially relevant cost-shifting considerations and case factors do not bear upon the findings. The pro-plaintiff 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. Based on these findings, we discuss potential policy measures. Beyond the identification of litigant asymmetries, we hope that this study can enrich the general civil litigation discourse through its comprehensive treatment of the entire spectrum of civil litigation, amongst all case dispositions.

This paper proceeds as follows: Section II typifies and reviews the various approaches found in the literature for confronting litigant asymmetries and introduces the approach used in this research. Section III discusses cost-shifting theory and describes the case study of the Israeli cost-shifting regime. Section IV presents the methodology and data, with an emphasis on definitional issues regarding case dispositions and outcomes. Section V reports the results and is divided into two parts: in the first, descriptive evidence is provided for a pro-plaintiff effect in the trial courts; in the second, this effect is confirmed and refined using inferential analyses. Section VI discusses the policy implications of the findings, and Section VII concludes.

II. Scientific Background

Do plaintiffs and defendants fare differently in civil litigation? A variety of research from interdisciplinary legal, economic and cognitive schools of thought can assist in identifying such asymmetries between litigants that arise primarily from their role as plaintiffs or as defendants. We typify and discuss three approaches used by theoreticians and empiricists for shedding light on this issue directly or indirectly, after which we introduce a fourth approach used in the present research for confronting litigant asymmetries. The first two approaches are based on empirical-legal models, which utilize observational data to examine outcomes and win rates in trial and appeal courts. The third approach is based on experimental testing of theories stemming from behavioral decision-making heuristics and hypotheses.

A. *First approach - win rates in trial courts*

When thinking about possible plaintiff-defendant asymmetries, perhaps the most intuitive approach is to review case outcomes and to compare plaintiff and defendant win rates in civil litigation. Eisenberg et al. (1995) provided the first systematic and comprehensive description of civil litigation outcomes in the U.S. federal and state courts. Their study showed plaintiff win rates in jury trials to be similar between state and federal courts, with an overall win rate of 51%. In an updated study of win rates in jury trials in U.S. federal and state courts, Cohen (2008) mirrored the results of the Eisenberg et al. study, also finding an aggregate 51% plaintiff win rate in jury trials of both court systems. In federal courts, the highest rate of plaintiff prevalence was

found in contract jury trials (63%), and the lowest rate was found in tort cases (46%). An examination of time trends in civil jury trial outcomes in both comprehensive studies showed a relative stableness in overall plaintiff win rates as well as within civil case categories. These empirical findings are compatible with the "50-percent tendency" hypothesized by Priest and Klein in their seminal 1984 article, by which trial outcomes of cases should be roughly similar and distributed equally between plaintiffs and defendants. According to this hypothesis, disputes which clearly favor one of the parties (as perceived by both plaintiffs and defendants), tend to settle more readily because both sides can save costs by settling. Conversely, cases less likely to settle, which then proceed to adjudication, are those that fall more or less equally on either side of the legal criterion, thus achieving a non-extreme equilibrium of win rates at trial. Subsequent theoretical and empirical literature has found this 50-percent hypothesis to predict success rate patterns when specific criteria are met, such as symmetry of information between plaintiffs and defendants (Hylton, 1993; Waldfogel, 1995), but to be limited as a general real-world prediction of civil litigation outcomes (Shavell, 1996; Kessler et. al., 1996, Clermont, 2009).

Outcome and win-rate data hold immense descriptive value about legal systems. Notwithstanding, when viewing this research in the specific framing of the question at hand, two main limitations can be pointed out due to which win-rate data in itself is not enough to determine whether plaintiffs or defendants hold an advantage over the other. The first relates to the inherent difficulty in interpreting win rates as data that stands alone, independent of any basis of comparison. Ideally, win-rate data should be interpreted relative to data about who *should* have prevailed in the case – data which is unavailable and furthermore, quite unattainable, since there is no absolute notion of a correct outcome. Lacking a normative "gold standard" of who should have won, meaningful interpretation of win-rate data requires other data to which it can be set against as a baseline or point of reference.

The second limitation of this approach results from selection biases, which limit the possibility of utilizing win-rate data in order to search for underlying factors that may affect case outcomes. Outcome data is usually based predominately on cases adjudicated on the merits, due to the relative availability and superiority of

information on these cases (Eisenberg and Lanvers, 2009). According to the selection effect, cases adjudicated on the merits are a biased and unrepresentative sample of the population of underlying disputes (Priest & Klein, 1984). Selection filters operate at all stages of litigation, running the gamut from a plaintiff's decision to file a claim among a mass of potential claims to any decision by the litigants to resolve the case short of full-fledged litigation. For example, if potential plaintiffs with low litigation costs tend to file relatively low quality cases on average, then this kind of systematic and asymmetric selection of cases for litigation will result in relatively low success rates for plaintiffs in trial courts (Eisenberg & Farber, 1997). Consequently, these observed win rates do not point towards asymmetries favoring defendants, resulting for example from judicial behavior and bias, but are merely a natural result of the operation of selection filters. Conversely, an evenness in observed outcomes between plaintiffs and defendants cannot lead to the conclusion that litigants fare equally in the courts, since the observed pattern could also be due to selection effects.

In a number of articles, Clermont and Eisenberg have refined methodologies attempting to control for selection effects in order to find evidence for other effects that may influence win rates (Clermont, 2009). Effects that were studied shed light on various aspects of the U.S. legal system, such as the "transfer effect" (the transfer of venue from one federal district to another - Clermont & Eisenberg, 1995); the "foreigner effect" (foreign litigants versus domestic litigants - Clermont & Eisenberg, 1996 and 2007), and the "removal effect" (removal jurisdiction from state to federal courts - Clermont & Eisenberg, 1998). Nonetheless, due to the lack of a baseline, as well as to selection limitations, win-rate data in itself cannot shed light about plaintiff-defendant relationships.

B. *Second approach - appeal outcomes set against a baseline of trial outcomes*

A second approach for examining litigant symmetries in trial courts has evolved in a series of articles focusing on prevalence in state and federal appellate courts. The researchers examine hypotheses regarding outcomes in trial courts using data from appeal win rates (such as Clermont & Eisenberg, 2001; Clermont et. al., 2003; Eisenberg & Heise, 2009), and more recently compare these appeal outcomes to the

base-line win rates of the same cases' outcomes in the trial courts (Eisenberg & Farber, 2013; Eisenberg & Heise, 2015). Results repeatedly find that defendants fare better than plaintiffs on appeal, so that even though the bulk of appeals are affirmed and not reversed, among the appeals that were reversed, the reversal rate for defendant appeals was much higher than that of plaintiff appeals (41.5% versus 21.5% in appeals from state court trials, in Eisenberg & Heise, 2009). Earlier studies have attributed this asymmetry between defendant and plaintiff reversal rates to an explanation of judicial bias in the appellate and/or trial courts, by which appellate judges may perceive there to be a pro-plaintiff bias in the trial courts (which may or may not exist) and consequentially develop a pro-defendant bias. More recently, the appellate findings were reanalyzed and alternative explanations were tested by tying together win rates at trial, appeal rates and success rates on appeal into one model (Eisenberg & Farber, 2013). These models led the authors to conclude that the observed rates can be attributed to plaintiffs' pursuing lawsuits where they should win on the merits less than half the time (i.e. plaintiffs have much more opportunity to file losing appeals than defendants do). Eisenberg & Farber (2015) reviewed and significantly extended the data, and suggest that the consistent asymmetrical findings are attributable both to selection effects and to biases and perceptions of judges on the trial and appellate levels, as well as to possible additional interpretations of the data.

The kind of methodology used in this second approach is innovative and, in the specific context of litigant asymmetries, is more complex than the first approach as it manages to deal head-on with the limitation deriving from solely observing trial win rates. Here, win-rate data in the trial courts comprises a baseline to which appeal win rates are compared to, thus enabling a meaningful interpretation of the win-rate data. That being said, and as the authors indicate in their research, special caution needs to be employed when analyzing appeal data to avoid inferring any normative and absolute notions about what the trial rate *should* be. The second limitation of the outcome approach for studying litigant differences - selection bias - is not solved using this approach and is even magnified, since in addition to the selection effects of the trial outcome data, this approach also deals with selection biases of appeal outcome data. Firstly, appeal studies are linked solely to trial court cases that were adjudicated on

the merits, thus precluding the wide body of civil litigation resolved by other forms of dispositions in the trial courts. Secondly, appeals are rare both in state and in federal courts in the U.S., and among the appeals, almost half of them are dropped or dismissed before an appellate ruling is issued. Thus, the cases that reach the final stage of an appellate hearing are not representative of the potential appeals not filed, as well as of the appeals filed but resolved before decided upon on the merits. As the authors point out, as well as other critics (for example, Edwards and Elliot, 2002), these multiple selection effects make it difficult to infer from appellate outcomes to plaintiff-defendant relationships in the trial courts. In order to diminish these effects and to more accurately interpret outcome results, as much data as possible is required about the analyzed court cases, some of which is not readily available in court databases widely used such as the database of federal cases gathered in the Administrative Office of the U.S. Courts.

To conclude thus far, the first and second approaches utilize observational data regarding win rates and appeals, in a variety of settings, to directly investigate phenomena related to the civil justice system, among these to how litigants fare in the courts. In a litigant asymmetry perspective, the first approach – observation of trial win rates – is limited due to the lack of a comparable reference point, as well as due to selection limitations. The second approach confronts the first limitation by observing appeal win rates against a baseline of trial win rates. However, this approach also suffers from selection limitations and on a greater scale, since the selection bias accompanying appeal data is added to that of trial data. Due to these limitations, any observed phenomenon regarding plaintiff-defendant similarities or differences may merely be a result of the operation of selection filters and subsequent differences between the characteristics of the cases.

C. *Third approach - behavioral decision-making of litigants*

A different perspective for exploring plaintiff-defendant differences is gained through theoretical and experimental models of cognitive psychology and behavioral decision-making. Specifically, prospect theory and notions of loss aversion and reference points (Kahnman & Tversky, 1979), have been adapted and shown to be especially relevant

in decisions made during the course of litigation (Zamir, 2012). Such decisions are influenced by the risk preferences of the litigants, and prospect theory asserts that the particular and dominant framing of the decision – as a loss or as a gain – will determine how the choice is made regarding that decision (Zamir & Ritov, 2012). Experimental studies, frequently conducted by presenting hypothetical scenarios to participants, indicate that litigants usually view the status quo immediately prior to litigation as the relevant point of reference, so that plaintiffs characterize decisions in the domain of gains, whereas defendants characterize decisions in the domain of losses. These differential reference points have been shown to influence the risk preferences and choices of the litigants. Plaintiffs make decisions between choices they regard as gains and tend to prefer certain gains over larger, but riskier gains. Conversely, defendants make decisions between choices that are framed as losses, and consequently will tend to prefer riskier outcomes over certain losses (Rachlinsky, 1996; Zamir & Ritov, 2010). Notions of baselines and loss aversion can serve to explain inherent differences between litigants that are unassociated with characteristics other than whether the litigant is a plaintiff or a defendant. This kind of research primarily focuses on litigant decision-making processes and cognitions. Nonetheless, the differences found between plaintiffs and defendants not only influence the decisions that these litigants make, but may also affect the decisions made by judges and other legal policymakers throughout the litigation process and at the end of the process (Zamir & Ritov, 2012).

This kind of experimental approach is free of selection biases, nor is a baseline required for studying these decision-making processes. Moreover, it enjoys a high degree of internal validity. However, unlike the first two approaches, this third approach is not directly related to the issue at hand of plaintiff-defendant asymmetries. Additionally, as always when discussing experimental versus observational empirical methods, its internal validity comes at a tradeoff with its external validity (Engel, 2014). That being said, this approach can provide the behavioral context and suggest explanations based on motivations and cognitions for explaining real-world results that may be observed regarding plaintiff-defendant asymmetries, as well as assist in predicting reactions to changes and reforms.

D. Our approach - setting cost-shifting patterns against a baseline of case outcomes

In this research, we introduce another angle with which to explore some aspects of the "who fares better" question by analyzing the relationship between the winning rates and between the cost-shifting fate of prevailing litigants. The Israeli cost-shifting regime presents a unique case study for applying this approach. At the end of every civil case in the Israeli judiciary, the civil rules stipulate that judges may grant costs in favor of a litigant. While the general expectation and guideline is that costs are normally to be shifted in favor of the prevailing litigant, judges have *complete* discretion in deciding whether to grant costs and in deciding their sum. Due to this distinctive characteristic of the Israeli cost-shifting regime, every civil case offers two comparable outcomes - the substantial case outcome (who prevailed) and the cost-shifting outcome - such that the actual winning rates comprise a baseline against which the cost-shifting rates are set and analyzed. Because these two comparable outcomes are relevant in each and every case, winning rates and cost-shifting rates can be compared in *all case dispositions*, be it cases resolved on the merits, by settlements, voluntary dismissals, default judgments and dismissals for lack of prosecution. By looking at all the possibilities of case outcomes as these are proportionally represented in the entire spectrum of civil litigation, we are able to mitigate a large part of the selection effect limitations. Consequently, the design of this approach makes it possible to somewhat overcome the two primary limitations of the first and second approaches.

Two additional advantages stem from the specific features of the dataset on which the results are based, which is presented in detail in section IV. Firstly, our baseline of win rates comprises of two dimensions of litigant prevalence - whether or not a litigant prevailed and, in monetary cases, the sum received proportionate to the sum claimed, in order to be able to account for formal "pyrrhic" victories (for example, in the case of an unexpectedly small recovery). Secondly, our database was created especially for the in-depth analysis of cost-shifting patterns and for enabling analysis of a variety of alternative explanations. Consequently, a large number of characteristics and parameters were coded for each case, which were possible to obtain only through careful reading of all documents related to the case. These characteristics enable this

approach to delve into the issue of plaintiff-defendant asymmetry in a more refined and filtered manner and to examine alternative explanations. On the downside, only a specific and limited dimension of plaintiff-defendant asymmetry is explored using our approach, through the lens of a procedure-tinted angle of civil litigation. This caveat regarding the scope and implications of this research should be kept in mind and will be discussed further.

III. The case study - Israel's cost-shifting regime

A. *Cost-shifting theory and rationales*

Civil proceedings are influenced and shaped by the costs of litigation. The monetary components of litigation are namely attorney fees, as well as court costs such as filing fees and expenses related to experts and witnesses (together referred to as "costs"). The expected benefits and costs of litigation largely determine litigants' decision-making processes during all stages of the legal proceedings. These stages range from the decision to initiate a lawsuit and to defend against a lawsuit, to how much effort to expend in preparation for a trial, to the strategy of litigation, and to the manner in which the case is resolved. Consequently, litigants' decisions are also dependent upon the rules governing the allocation of costs between the parties at the end of litigation ("cost-shifting regimes" or "fee regimes") (Kritzer, 2009). These rules regulate the possible return of costs that a prevailing party may receive from the losing party, as well as the risk a litigant bears for paying the costs of a prevailing adverse party. In most countries, the fee regime asserts that the loser must pay the winner's costs ("loser pays rule" or the "English rule"). In U.S. federal courts with the exception of Alaska, as well as in certain proceedings elsewhere, the declared rule is that generally, each side bears its own costs, regardless of the litigation outcome (the "American rule").[2]

Cost-shifting theories and models, discussed in an extensive body of theoretical literature as well as in policy papers and initiatives, portray the underlying rationales

[2] Extensive comparative data and analysis of cost-shifting regimes can be found in Hodges et. al. (2009), Huntley et. al. (2011) and Reimann (2012).

of fee shifting regimes and the objectives that cost allocation rules can and should fulfill in civil litigation (for example - Hirsch & Sheehey, 2005; Gryphon, 2008; Eisenberg & Miller, 2013). The foremost rationale of any loser pays fee regime is one of fairness and equity, by which a losing party should indemnify a prevailing party for costs expended in order to obtain justice in the courts (Reimann, 2012). Cost-shifting theories also discuss additional rationales, relevant to cost-shifting regimes guided by the English rule as well as to regimes closer to the American rule. These additional rationales can be categorized into three main groups. The first relates to the *ex-ante* effects of fee regimes on the incentive structures and decisions of potential litigants, thereby influencing the scope of civil proceedings and the extent of access to justice. These include the use of cost-shifting mechanisms as a deterring influence against filing unmeritorious claims and defenses, as well as cost shifting as a tool for promoting access to justice for litigants of limited means with meritorious claims or defenses (Hughes & Snyder, 1995). A second category of these additional rationales refers to fee regimes' roles in shaping and influencing the *ex-post* behavior of litigants during the proceedings. For example, cost-shifting rules can be used as a sanction for improper procedural actions and for causing unnecessary expenses or delays, as well as in influencing trial strategy by encouraging settlements and penalizing unreasonable settlement positions (Inglis et al., 2005).[3] Thirdly, cost-shifting rules can sometimes be utilized for promoting distributive justice by operating such considerations as resource disparities between the litigating parties or personal circumstances (Rosen-Zvi, 2010).

The actual role of fee shifting regimes in the civil litigation of each country is shaped and determined by the way in which the cost-shifting rules and regulations balance and prioritize between all of these underlying rationales, implicitly or explicitly. In fee regimes where the indemnification rationale is predominant, two empirical observations are to be expected: one, that prevailing litigants are allocated costs in

[3]This second group of rationales can also be found in regimes based largely upon the American rule, whereby costs are not automatically shifted in favor of the prevailing party. For example, the U.S. federal rules of civil procedure stipulate that a litigant may be made to pay the adverse litigant's costs as a behavioral sanction, or in some cases where a settlement proposal was rejected by a litigant and was followed by a trial award equal or less favorable than the offer (see Shapard, 1995).

generally all cases; and two, that the amounts of these shifted costs closely represent the actual costs expended by the prevailing party. However, in many fee regimes adhering (declaratively and practically) to the loser pays principle, the cost-shifting rules and practices may make room for additional rationales of cost allocation, depending upon how the reimbursed costs are calculated and how close they are to the actual costs incurred by the prevailing party. For example, in some fee regimes, recoverable attorney fees are calculated based on an official tariff or based on varying percentages of the claim or recovery amount (Reimann, 2012). Such systems provide for predictability regarding cost-shifting risks and benefits, which may enable the fee regime to influence litigant behavior before and during litigation, for example as a deterring force against filing frivolous lawsuits. In other fee regimes, some discretion is granted to the courts in tempering the loser pays rule by lowering the recoverable costs based on concrete case circumstances.[4] This kind of judicial discretion enables the use of cost shifting as a sanction against litigants who did not act in good faith during the procedure. It also enables a judge to deny costs or to lessen the costs amounts after taking into account personal circumstances of the losing litigant and wealth disparities between the litigants. These fee regimes normally allow for less predictability, thus disabling potential litigants from considering fee shifting in their decision-making processes.

B. *The Israeli cost-shifting regime*

The rationales of cost-shifting statutes are reflected differently in each fee regime, depending on the general cost-shifting rule, the manner of calculating the costs amounts, the certainty provided to litigants and the judicial discretion vested to the courts. Unique from all of these fee regimes is the Israeli fee regime,[5] in which the recovery of litigation costs is left entirely to judicial discretion as regards both the

[4] For example, in some Nordic countries, the recoverable attorney fees need to be deemed by the court as necessary and reasonable (Reimann, 2012). In England and Wales, the Civil Procedure Rules list many factors that can be taken into account by the courts, such as proportionality.

[5] The fee regimes of South Africa, and to some extent India, may be characterized as somewhat similar to the Israeli fee regime in the amount of judicial discretion awarded to the courts or practiced by the courts in cost allocation. In South Africa, for example, cost allocation is in theory also left entirely in the discretion of the courts, although in practice some costs are shifted to the prevailing litigant (see Reimann, 2012: 51).

decision to allocate costs in favor of a litigant as well as the determination of the costs amounts. The Israeli Rules of Civil Procedure of 1984 (hereinafter "the Rules") stipulate that at the end of a civil procedure, the judge shall decide whether to grant costs and the amount of these costs (Fisher & Rosen-Zvi in Reimann, 2012). The Rules further specify a non-exhaustive list of considerations that *may* be taken into account by the judges in their decision to allocate costs, among these the value of the claim, the value of the granted relief, and the behavior of the parties during litigation. Israeli Supreme Court decisions have added upon these considerations as well as discussed the balance between the considerations and rationales of cost shifting. Such considerations include case characteristics and complexity, the proportionality between the requested and granted relief and the amount of work invested by the attorneys in the case. The general expectation, as arises from case law and from civil procedure literature, is that the Israeli fee regime follows the loser pays principle (for example, Goren, 2013). This expectation has recently been empirically tested for the first time in a large-scale study conducted by Eisenberg, Fisher and Rosen-Zvi (2013, 2014), describing the manner in which judges exercise their discretion in allocation of costs in district court cases adjudicated on the merits. Their empirical evidence shows that the de facto rule in these cases is the English rule, in that costs were predominantly awarded to prevailing parties, albeit the awarded costs were significantly lower than the actual litigation costs expended by the litigants. However, this is only a partial depiction of the Israeli de facto fee regime, as it refers only to civil cases in the district courts that were adjudicated on the merits, following a full trial and a reasoned judicial decision. As in other jurisdictions, these cases are the exception and not the rule in Israeli civil litigation. Most cases are resolved short of full-fledged adjudication, by way of in-court or out-of-court settlement, voluntary withdrawal and so forth – in what has been coined the "vanishing trial" phenomenon (Galanter, 2004).[6] As detailed in the next section, our research design and dataset enable us to account for *all types of case resolutions.*

[6] Thus, only 18% of the civil cases in Israel are resolved following a contested trial (see Table 2 for a complete portrayal of the case disposition frequencies in Israel).

IV. Research Design

A. *The methodology - empirically testing litigant asymmetry using cost-shifting data*

For each of the civil cases in our dataset, we analyzed the interactions between the substantial outcomes (litigant prevalence) and the cost-shifting outcomes. In cases terminating as the result of contested proceedings and in default judgments, litigant prevalence is relatively easy to determine, based on whether the sought relief was granted or denied. In other cases, determination of litigant prevalence is closely related to the manner of case disposition and its implication for litigant success. We address and define these relationships between case dispositions and outcomes in the following subsection.

Table 1 presents a simplified description of our approach, such that each row (1-4) portrays a different scenario for the possible relationship between the outcomes of the case. In scenarios 1 and 2, prevailing plaintiffs and defendants share the same cost-shifting fate: In *scenario 1*, costs are shifted in favor of prevailing plaintiffs as well as in favor of prevailing defendants ("costs granted") - the English rule of costs. In *scenario 2*, costs are not shifted in favor of either litigant ("costs denied") - the American rule of costs. If the empirical evidence points towards either of these scenarios, then we can conclude that our approach does not indicate an observed asymmetry between the litigants as regards cost shifting. In *scenario 3*, costs are shifted in favor of prevailing plaintiffs but not in favor of prevailing defendants, i.e. prevailing plaintiffs are granted costs more frequently or in higher sums than prevailing defendants are. This kind of empirical evidence points towards an advantage that plaintiffs may have over defendants as regards cost shifting. In *scenario 4*, prevailing defendants are granted costs more frequently or in higher amounts than prevailing plaintiffs, thus indicating an advantage that defendants may have over plaintiffs.

Table 1: Setting cost-shifting rates against a baseline of case outcomes

		Plaintiff prevailed	*Defendant prevailed*
Scenario 1	Costs granted	+	+
	Costs denied		
Scenario 2	Cost granted		
	Costs denied	+	+
Scenario 3	Costs granted	+	
	Costs denied		+
Scenario 4	Costs granted		+
	Costs denied	+	

In the case of observed asymmetries (scenarios 3 or 4), the second stage of the research design assesses possible alternative explanations that may account for the data, using linear and logistic regression analyses. Some possible alternative explanations can arise from the theoretical rationales of cost-shifting regimes presented in the previous section, such as deterrence against unmeritorious claims, promotion of distributive justice, and sanctions against certain litigious behaviors. A large number of indicators are used to analyze these and additional possible alternative explanations, such as behavior of the litigants, case characteristics and litigants' characteristics.[7]

B. Case dispositions and outcomes - categorization and definitions

Table 2 presents the frequency of case dispositions and outcomes in our data, and summarizes the relationships between the variables. As shown in the table, cases adjudicated on the merits and default judgments have a number of possible outcomes of litigant prevalence. For all other case dispositions, the outcome of the case directly corresponds with the case disposition.

[7] See subsection V(B) - "modeling the regressions", for a detailed description of the variables and indicators examined in the regression models.

Table 2: Case dispositions and litigant prevalence

Case disposition[8]	*Case outcome possibilities*
Adjudication on the merits[9] *17.9% of all cases (n = 357)*	1. Complete plaintiff prevalence (27% of the cases) 2. Partial plaintiff prevalence (40% of the cases) 3. Defendant prevalence (33% of the cases)
Default judgment *16.5% of all cases (n = 329)*	1. Complete plaintiff prevalence (91% of the cases) 2. Partial plaintiff prevalence (7% of the cases) 3. Defendant prevalence (2% of the cases)
Voluntary withdrawal *9% of all cases (n = 180)*	Defendant prevalence
Lack of prosecution *7.2% of all cases (n = 144)*	Defendant prevalence
Settlement: 1. court-approved settlement (*35.2% of all cases ,n = 704)* 2. out-of-court settlement (*10.4% of all cases, n=207*)	Settlement outcome

In cases *adjudication on the merits*, following a contested trial (approximately 18% of the cases), a reasoned judgment can yield three possible outcomes - complete prevalence of the plaintiffs, when all the sought remedies were granted; partial prevalence of the plaintiffs, when some of the sought remedies were granted; and prevalence of the defendants, when the sought remedies were denied.[10] We found that cases resulting in complete and in partial prevalence of the plaintiffs are extremely similar in their cost-shifting characteristics, and therefore we treat these cases as a combined category of "plaintiff prevalence". This unified treatment of full

[8] 77 cases in the dataset (3.85% of the cases) were terminated for reasons other than those listed here, mainly due to statistical closings and to joinder of claims.

[9] In the category of cases adjudicated on the merits we also included the small percentage of cases (n=79) resolved through judgment by way of consent under section 79a(a) of the Israel Courts' Act (Consolidated Version)-1984. This section enables the Court, with the consent of the litigants, to rule on a matter without detailing the reasoning of the judgment.

[10] Counterclaims were filed in only 45 cases of the sample. In the eight cases where counterclaims were filed and both plaintiffs and counter-plaintiffs received a monetary relief, we deducted the amounts received and defined the prevailing litigant as the party who received a higher sum.

and partial plaintiff prevalence is also the norm in other empirical literature that analyzes case outcome date (for example, Clermont & Eisenberg, 1998; Cohen, 2008; Eisenberg & Farber, 2013). That being said, when the claims were monetary in nature we also analyzed the recovery amount as a percentage of the claim, as an added dimension of litigant prevalence. *Default judgments,* which comprise approximately 16% of the cases in the data, are cases in which the defendant does not file a defense or fails to appear in court, and the plaintiffs applies to the court for a default judgment based solely on the merits of the claim.[11] Although a default judgment by the court offers the same possible outcomes as cases adjudicated on the merits, these cases are predominately favorable to the plaintiff. Defendants prevailed in the rare occasion when plaintiffs' claims were denied.

In the remaining cases (approximately two thirds of the cases in our data), definitional issues of case dispositions and outcomes need to be addressed. [12] As discussed in Eisenberg and Lanvers (2009), these categorical definitions depend upon the research question and the analytical issues at hand. For example, when seeking to measure the rates of settlement in civil litigation, the outcome definitions focus on distinguishing between cases that settled and cases that did not. In this research, similar to Huang (2008) and Eisenberg & Lanvers (2009), outcome definitions of uncontested cases focus on distinguishing between plaintiff and defendant success in each of the disposition categories, with the exception of settlements, as follows:

Cases dismissed for *lack of prosecution* are cases in which a plaintiff fails to pursue a required action, such as filing of a motion or complying with a court order. After a certain period of inactivity, the court dismisses the claim, usually without prejudice. Plaintiffs recover nothing in these cases, and they are therefore defined as cases in which defendants prevail. Case inactivity, which precludes in dismissal of the case, can occur during all stages of the proceedings, including after motions were filed and after

[11]Some cases resolved by default judgments are reopened due to request by the defendants, and can then resolve in a different manner (for example, in a settlement between the parties). In our coding of closed cases, we defined case resolution *based on the final disposition* of the case, so that cases such as reopened default judgments were not categorized as such.

[12] See Hadfield, 2004 regarding the importance of consistent and accurate coding of the disposition methods of non-trial adjudications.

hearings were held. Cases dismissed due to *voluntary withdrawal of the claim* by the plaintiff are cases in which the plaintiff withdraws the case, due namely to a decision not to pursue litigation or to refile at a later date. The plaintiffs recover nothing in these cases, and they are consequently defined as cases in which defendants prevail.

Lastly, cases resolved by settlements can be categorized as either court-approved settlements or out-of-court settlements. *Court-approved settlements* are case dispositions in which the parties reach a settlement, whether by judicial promotion, mediation or any other manner, and bring it to the court for approval. *Out-of-court settlements* are cases in which parties settle the case out of court, with the plaintiff withdrawing the suit instead of presenting it before the judge.[13] Parties will choose between court-approved or in-court settlements based, for example, on considerations of confidentiality or of lawyer fees. Settlements are normally associated with plaintiff prevalence, as they usually result in some kind of monetary transfer in favor of the plaintiff (Eisenberg & Lanvers, 2009; Genn, 2010). Nonetheless, in this research we do not associate settlement outcomes directly with plaintiff prevalence. Settlement outcomes receive different treatment because our empirical model compares between substantial outcomes and cost-shifting outcomes *as decided upon by the judge*. In settlements, the judicial role at the end of the case is usually minimal and focuses on approving the settlement terms (in court-approved settlements) or the stipulated dismissal (in out-of-court settlements) reached by the parties. As part of the consensual nature of these cases, it is to be expected that the settlement terms also take into account indemnification issues regarding litigation expenses. In fact, the data analysis shows that settlements for the most part do address cost-shifting issues, be it to include or to exclude costs, and the judge very rarely interferes with these arrangements.

[13] Unlike the Administrative Office data of the U.S. Courts , our data is able to discern between voluntary withdrawals and out-of-court settlements because cases were coded based on all the documents and hearing protocols of the case, thus ensuring a coding of "out-of-court settlement" in any instance where the judge was notified of withdrawal due to an external agreement (see Hadfield, 2005). It may be probable that there are cases in which the parties reached an agreement without notifying the court of that fact, in which case the disposition was coded as voluntary withdrawal. However, given that our interest lies in the relationship between the cost-shifting decision of the judge and the case outcome that the judge was aware of, we deem this a minor methodological issue.

C. Dataset

Our data derives from an extensive dataset we created particularly for the study and analysis of the Israeli fee regime.[14] The dataset provides descriptive information regarding 2,000 civil proceeding cases of original jurisdiction. These cases constitute a representative sample of approximately 2% of all civil proceeding cases resolved between December 2008 and December 2011 in 10 trial courts – the district trial courts of Tel Aviv, Central, Jerusalem and Be'er Sheva (435 cases) and the magistrate trial courts of Haifa, Petah Tikva, Herzliya, Tel Aviv, Jerusalem and Be'er Sheva (1,565 cases).[15] The confidence level of the sample is above 95% and the sampling error is below 6%. We used a stratified sampling method in order to ensure that the sample accurately and proportionally represents the total population of first instance civil cases in Israeli courts. We first chose the courts in the sample and calculated the representative number of cases required from each court. We then randomly sampled, from each court, cases that were resolved during the examined period.

The case files were accessed using the official computerized case routing and management system of the Israeli judiciary, "Net Hamishpat".[16] Using this database of cases ensured that the sample is representative of the entire population of civil cases, across all case dispositions. The data codebook, attached hereto in the Appendix, consists of over 200 variables.[17] These include a range of case and litigant characteristics, such as the legal matter, case disposition and outcome, the judges, the time on the docket, litigant status and information about the lawyers. Other variables

[14] The dataset was created as part of the work of the Israeli Courts Research Division and is publicly available at http://elyon1.court.gov.il/heb/Research%20Division/dbeng.htm.

[15] The reasons for choosing these particular courts as the subjects of our analysis are as follows: First, they are geographically representative of the different districts and locations of Israel, such that the financial and administrative centers of the country are represented as well as the periphery. Second, the largest courts in terms of case flow and case variance are represented (such as the courts of Tel Aviv and Petah Tikkva/ Central District), and there is also representation of the smaller and less varied courts (such as Herzliya). Subject to these considerations, these courts are representative of the magistrate and district courts in Israel.

[16] In some instances in which not all documents of a sampled case were scanned to the computerized system, the documents were located via the relevant court archives.

[17] Third and fourth-year law students coded the cases under our direct supervision, after careful reading of all the documents in the case file. A second tier of encoders randomly sampled approximately 10% of the cases for accuracy and inner reliability and found that the coding was consistent with an accuracy of over 95%.

encompass the entire processing of the case, including the pleadings, written motions and judgments, preliminary and trial hearings, continuances, temporary injunctions, summations and witnesses. Variables describing cost-shifting details of the case include whether the litigants requested costs, whether costs were granted, the sum of the granted costs and their proportion to the requested costs and to sum of the claim, and comments the judge may have made concerning cost allocation or denial.[18]

Our dataset of Israeli civil proceedings is unique in that it constitutes a representative sample of the complete body of civil cases and all disposition types, thus minimizing selection biases of the data. Moreover, the extent of the detailed information at the individual case level enables an in-depth analysis of the data as well as examination of alternative explanations for the findings. However, these advantages are at the same time the primary limitation of the data, in that the depth of analysis comes at a tradeoff for breadth. Since all cases are included and accurately represented in the sample, and each case is coded for a large set of parameters, our sample size does not enable separate analysis at more specific and focused levels, such as at the case matter level.

V. Results

A. *Empirical evidence for a pro-plaintiff effect - descriptive analysis*

11. *Cost-shifting rates*

Figure 1 presents the observed cost-shifting rates in all cases when plaintiffs prevailed as compared to when defendants prevailed. As is graphically evident, awarding of costs is significantly correlated to litigant prevalence. Prevailing plaintiffs were awarded costs in 81.1% of all civil cases, whereas prevailing defendants were awarded costs in only 21.8% of the cases (Cramer's $V = 0.591$, $p < 0.005$). These findings point towards two submerging cost-shifting regimes in Israel - one following the "loser pays

[18] Most of the granted costs are awarded at the end of the proceedings, as part of the final decision. Costs were granted in interlocutory decisions in 62 cases in the sample. In the majority of these cases (n=43), costs were granted both via interim decisions and at the end of the proceedings, such that only in 19 cases were costs granted solely in interlocutory decisions (these cases constitute less than 1% of all cases in the dataset, and 3.1% of cases in which costs were granted).

rule" for prevailing plaintiffs, and one following the so-called "American rule" of costs for prevailing defendants.

Figure 1: Cost-shifting rates across litigant prevalence, in all civil cases[19]

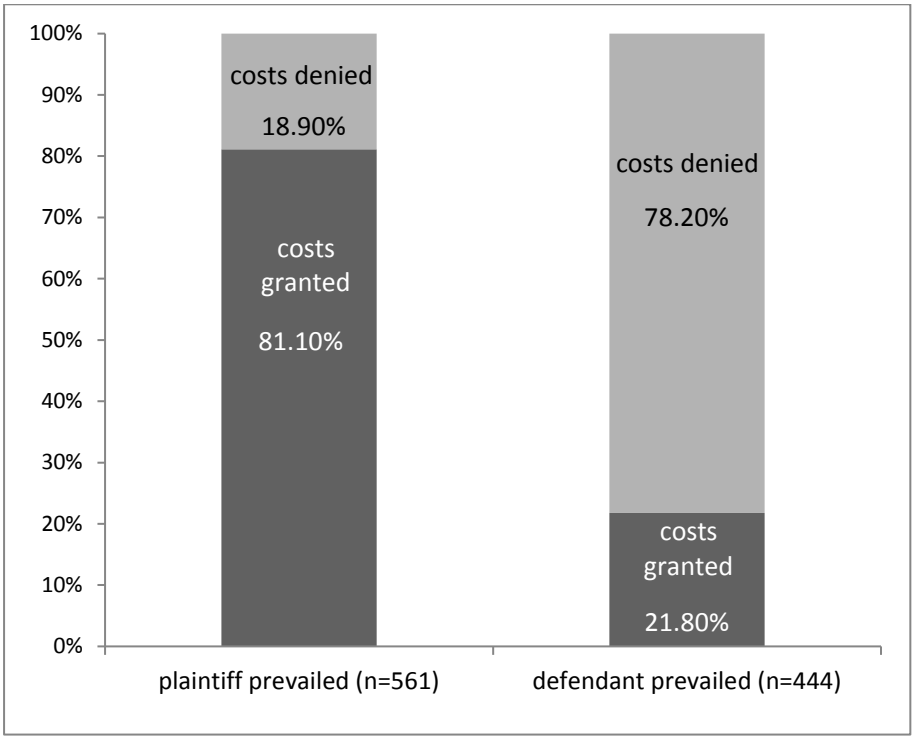

Table 3 breaks down these cost-shifting trends into the different categories of case dispositions. In cases resolved by default judgments, costs were awarded plaintiffs in almost 90% of the cases.[20] Conversely, in cases dismissed due to lack of prosecution or to voluntary withdrawal, costs were awarded defendants in only 10% of the cases. The low cost-shifting rates in these last two categories of case dispositions are surprising considering the relevance of the cost-shifting tool in many of these cases. Thus, in some cases, especially in those dismissed due to lack of prosecution, cost shifting could be relevant as a deterrence tool against filing of unmeritorious claims. Moreover, indemnification of the defendants could also be relevant since quite often

[19] Data analysis of all cases does not include cases resolved by court-approved settlements (n=704) or by out-of-court settlements (n=207), for reasons detailed in the previous section. Also not included are cases terminated for various reasons such as statistical closings and joinder of claims (n=77).

[20] Defendant prevalence in default judgments is extremely low – only in five out of 328 cases in the database.

the defendants incurred various costs prior to the dismissal of the claim (for example, in 40% of these cases, the defendants filed a claim of defense).

Examination of cost-shifting rates within the subgroup of cases adjudicated on the merits allows for a unique in-group analysis of the differences between plaintiffs and defendants, precisely because either litigant can prevail. In these cases, the majority of prevailing plaintiffs were awarded costs (72.3%), as compared to a little more than half of the prevailing defendants (54.3%) (Cramer's V = 0.178, $p < 0.005$).

Table 3: Cost-shifting rates by case disposition

	Costs granted	
	Plaintiff prevailed	*Defendant prevailed*
Adjudication on the merits (n=354)	72.3%	54.3%
Default judgment (n=327)	87.6%	-
Lack of prosecution + voluntary withdrawal (n=324)	-	9.9%

12. *Amounts of costs*[21]

A second dimension of cost-shifting trends is the amount awarded to the prevailing litigant. In all monetary cases in which costs were awarded, we analyzed the cost amount as a percentage of the claim amount. When the plaintiffs prevailed, the costs amounted to an average of 23.45% of the sum of the claim. When the defendants prevailed, the average percent of costs was lower by more than half - 11.42% ($p < 0.005$). This marked difference between plaintiffs and defendants in the adjusted level of costs is also apparent when focusing only on cases adjudicated on the merits. In these cases, the costs awarded plaintiffs were on average 20.59% of the claim amount, compared to an average of 12.17% of the claim amount for costs awarded defendants ($p < 0.005$).

[21] Costs amounts refer to the costs awarded in favor of the first plaintiff or defendant, in order to enable a satisfactory comparison between litigants. In cases where the amount was awarded as an overall sum, without specifying different amounts for the various litigants, that sum was divided equally by the number of prevailing litigants.

These differences between plaintiffs and defendants, as reflected by the costs as a percentage of the claim amount, are in fact even higher. This is because while plaintiff prevalence can be either full or partial, defendant prevalence is always a complete victory, since the claim was denied and none of the sought reliefs were granted. Due to this difference, a more refined way of viewing and comparing *adjusted* costs amounts is to compare between costs as a percentage of the *recovery* for prevailing plaintiffs, and between costs as a percentage of the *claim* for prevailing defendants. *Table 4* summarizes the various perspectives in viewing the differences in costs amounts between plaintiffs and defendants, in cases adjudicated on the merits. In these cases, prevailing plaintiffs received costs equal to an average of 27.89% of the amount recovered, compared to the aforementioned 12.17% received by prevailing defendants out of the sum claimed.[22]

Table 4: Cost-shifting amounts across litigant prevalence, in cases adjudicated on the merits

Costs granted	*Plaintiff prevailed*	*Defendant prevailed*
as a percentage of the claim	M = 20.59% (n=132)	M = 12.17% (n=34)
as a percentage of recovery	M = 27.89% (n=133)	---
absolute amounts[23]	M = 13,938.5 NIS (n=172)	M = 10,346.4 NIS (n=63)

[22] This comparison is also relevant in cases resolved by default judgments. In these cases, the plaintiff is usually granted the entire sought claim, and therefore the average proportion between the costs and the claim amount is 25.12%, almost identical to the average proportion between the costs and the amount recovered (25.43%).

[23] In all civil cases, absolute costs awarded in favor of prevailing plaintiffs (M = 9,142.2 NIS, SD = 38,922.6 NIS) were also higher than those awarded prevailing defendants (M = 8,737.7 NIS, SD = 18,895.9 NIS) ($p < 0.005$). Although statistically significant, these differences may seem quite negligible from a practical point of view, when viewed as absolute costs as opposed to adjusted costs. The more substantial difference in absolute costs viewed in cases adjudicated on the merits is explained when looking at the case disposition level. Thus, in cases resolved by default judgment, plaintiffs prevail in nearly all cases, and in 87.6% of these cases they are also granted costs, at an average sum of 6,226.7 NIS, which substantially lowers the overall average of costs granted to plaintiffs.

Thus, descriptive analysis of the data shows that prevailing plaintiffs are granted costs more frequently, and the levels of costs granted are higher, than those awarded to prevailing defendants. This asymmetry in favor of plaintiffs – what we term the "*pro-plaintiff effect*" – is prevalent amongst all civil cases, and it is also observed within the subgroup of cases adjudicated on the merits.

B. *Evaluating possible explanations for the pro-plaintiff effect- inferential analysis*

21. *Modeling the regressions*

The regression analyses focus on cases adjudicated on the merits. We use a broad set of independent variables, one of which is whether the prevailing litigant is the plaintiff or the defendant - the independent variable of primary interest. As explained above, this variable can be isolated from the disposition method of the case primarily in cases adjudicated on the merits, which is why we are able to delve more deeply into this subgroup of cases. Other controlled variables included in the regression are case and litigant characteristics that might also influence the cost-shifting outcome and consequently may serve as alternative explanations for the pro-plaintiff effect. These variables, detailed below, stem for the most part from the considerations stipulated in the Rules governing the fee regime in Israel and from Israeli Supreme Court rulings regarding cost shifting. Many of these variables are relevant only in cases adjudicated following a full and contested trial, which is the second reason we examined explanations for the pro-plaintiff effect specifically in these cases.

i. Variables of interest

First, the *complexity of the case and the amount of work invested by the lawyers* are mentioned in Supreme Court decisions as relevant considerations in judicial cost allocation. To capture the possibility that these considerations influence the judicial cost-shifting decision, we included a number of variables that indicate both case complexity and resources invested by attorneys.[24] These are the substantial written

[24] Case complexity and the amount of work invested by the attorneys are distinct variables that do not necessarily coincide with each other (an attorney can invest time in a relatively simple case and vice versa). That being said, among the case data available to us, the same indicators are relevant for both parameters.

motions submitted by plaintiffs and defendants; the number of hearings; submission of a defense; motions for temporary injunctions submitted by plaintiffs and defendants; the number of witnesses, depositions and expert opinions heard or submitted on behalf of plaintiffs and defendants; and the number of pages of claim and defense (see the Appendix for the precise coding variables and methods).

Second, the *behavior of the litigants during the proceedings* may also play a part in the judicial cost-shifting rulings, as stipulated in the Rules. To indicate litigant behavior, we counted the number of hearing discontinued due to non-compliance, usually when the litigants fail to appear in court. We also counted the number of motions submitted by plaintiffs and defendants for temporary injunctions that were dismissed by the court. This second indicator is non-exclusive, since a dismissed motion is not necessarily a frivolous motion or one that indicates problematic behavior by the litigant. Moreover, both variables indicate only partial aspects of litigant behavior, and unfortunately, we were unable to directly quantify other facets of litigant behavior.

Third, other considerations discussed in the Rules and in Israeli Supreme Court decisions may also influence cost allocation, and are therefore included in our analysis. These are the *value of the claim*, *the value of the granted relief* and *the proportionality between the requested and granted relief*.

Fourth, in order to account for *resource disparities between litigants*, which also possibly play a part in cost-shifting decisions, we use variables that identify litigants' status as individuals or corporations.[25] It should be noted that this indicator is limited in its identification of resource disparities, since we did not have supplementary data regarding the actual financial situation of the litigants (for example, the size of the corporation).

Finally, some general case characteristics were included as variables in the regression models. We made a distinction between *tort cases* and other case matters because of different cost-shifting norms governing tort cases and due to empirical findings

[25] Plaintiffs or defendants were classified as "corporations" if at least one of the plaintiffs/defendants was a corporation and as "individuals" only if all plaintiffs/defendants were individuals. Cases involving governmental or local authorities, or non-profit organizations were rare (~5% of the cases) and therefore excluded from this analysis.

regarding the distinctive features of fees in these cases (Eisenberg et. al., 2014).[26] The instance of the court - magistrate or district - was also included as a variable because of inherent differences between the nature of the cases brought before each instance (Eisenberg et. al., 2013). In addition, case disposition time was also included on account of potential influences on judicial decision-making in general (Clermont & Eisenberg, 2007)[27].

ii. Request of costs by litigants

We also controlled for whether or not the prevailing litigant requested costs to be granted in her favor and for the sum of the requested costs. Inclusion of these variables as relevant considerations for cost shifting is not based on prior theoretical or empirical literature. Moreover, under Israeli civil procedure, judges are required to address the costs issue at the end of each proceeding *regardless* of whether the litigants requested costs or not. For these reasons, we were surprised to find that our descriptive observations did in fact point towards correlations between these factors and the judicial cost-shifting decision. Thus, within cases adjudicated on the merits we found that prevailing plaintiffs were awarded costs in 92.9% of the cases in which they requested costs and specified an amount; in 79.7% of the cases in which they submitted a general request for costs without specifying a sum; and only in 38% of the cases in which they did not request costs (Cramer's $V = 0.423$, $p < 0.001$, $N = 256$).[28]

The importance for inclusion of these variables in our regression models is twofold: First, the correlation shown between request of costs and cost shifting deems it necessary for these variables to be held constant in the regression. Moreover, as depicted in *Table 5*, the descriptive data also points towards differing cost-requesting

[26] The Israeli Compensation for Victims of Road Accidents law imposes maximum fees, as a percentage of the recovery, to be awarded to plaintiffs in automobile tort cases. In addition, the Israeli Bar Association has a schedule of recommended minimum tariffs, which distinguish between monetary claims and between non-vehicular tort claims with contingent fees.

[27] Some of the independent variables we used can also serve as indicators for other parameters. Thus, for example, case disposition time and the value of the claim can also be regarded as indicators for case complexity and attorney resources.

[28] We also found similar correlations when examining the entire dataset of civil cases. In all civil cases, prevailing plaintiffs were awarded costs in 98.7% of the cases in which they requested costs and specified an amount; in 78.8% of the cases in which they requested costs in general; and in 39.3% of the cases in which they did not request costs (Cramer's $V = 0.544$, $p < 0.001$, $N = 455$).

behaviors between plaintiffs and defendants, such that plaintiffs tend to request costs more so than defendants.[29] This implies that the different cost-requesting behaviors of plaintiffs and defendants may constitute a possible explanation for the pro-plaintiff effect and need to be held constant in the regressions.

Table 5: Request of costs by plaintiffs and defendants, in all civil cases[30]

	Plaintiffs	*Defendants*
general request for costs	*44.7%*	*21.6%*
specified request for costs	*17.6%*	*0.7%*
no request for costs	*16.6%*	*68.4%*
withdrawal of initial request for costs	*21.1%*	*9.3%*

N = 1,921

22. *Estimating the effects of the prevailing litigant on cost-shifting rates*

Table 6 reports the results of the logistic regression model, which estimates the effects of the prevailing litigant on cost-shifting rates in cases adjudicated on the merits (shifted = 1; not shifted = 0). The regression table presents only the variables that achieved statistical significance, as well as a number of additional key variables.

Our findings show that when all variables are held constant in the regression, the prevailing litigant continues to have a sizable and significant effect on the cost-shifting rates. Prevailing plaintiffs are granted costs more often than prevailing defendants, such that the independent variable "prevailing litigant" has a positive coefficient of 0.844 and is statistically significant. The logistic regression model is also consistent with our descriptive findings according to which the request of costs by a prevailing

[29] In almost half of the cases (44.7%), plaintiffs submitted a general request for costs to be shifted in their favor, without specifying a sum for the requested costs or any alternative method to calculate these amounts (for example as a percentage of the claim). In an additional 17.6% of the cases, plaintiffs submitted a request for costs that included a specified amount. By contrast, defendants made a general request for costs in 21.6% of all cases, and in only 0.7% of all cases did they submit a specified request for costs. In the majority of cases, defendants did not submit a request to grant costs in their favor (68.4%).

[30] Request of costs was coded according to the most recent such request during the course of the proceedings - whether submitted via the claim/defense/any later written motion or whether presented orally during a hearing. Withdrawal of initial request for costs mostly occurred in cases resolved by way of settlements.

litigant significantly raises the probability of costs being granted to that litigant (the variable "costs requested by prevailing litigant" has a positive coefficient of 0.701 and is statistically significant). Since plaintiffs tend to request costs more than defendants, this can serve as an explanation for the pro-plaintiff effect, but only as a partial one as the pro-plaintiff effect persists when request of costs is held constant in the models.

A surprising result of the regression is that almost none of the variables that presumably should influence the cost-shifting decision were statistically significant. Thus, the values of the claim and the granted relief (both in NIS values and in log transformation of NIS), as well as the proportionality between them, did not have an effect on cost-shifting rates. In addition, most of the indicators for case complexity and invested resources[31] and both indicators for litigant behavior were insignificant and negligible in their influence on the decision to shift costs. In fact, only two variable coefficients were significantly and positively associated with the decision to shift costs in favor of the prevailing litigant: In the plaintiff-defendant combinations, only when the contested case was between corporations was the probability significantly higher for cost shifting. Time on the docket was also significant, such that the lengthier the proceedings the higher the probability for cost shifting.[32]

[31] Among these variables are the submission of a defense; motions for temporary injunctions submitted by plaintiffs and defendants; the number of witnesses, depositions and expert opinions heard or submitted on behalf of plaintiff and defendants; and the number of pages of claim and defense.

[32] The distribution of the length of proceedings variable is not normal, which is why we used a log transformation.

Table 6: Logistic regression model of cost-shifting rates

Prevailing litigant:		
Defendant prevalence	reference	
Plaintiff prevalence	.844**	(.28)
Costs requested by prevailing litigant:		
Costs not requested	reference	
Costs requested	.701**	(.269)
Instance		
Magistrate court	reference	
District court	.78	(.381)
Case type:		
Non-tort	reference	
Tort	1.266	(1.103)
Litigant characteristics:		
Individual v. individual	reference	
Individual v. corporation	.532	(.431)
Corporation v. corporation	.878**	(.406)
Corporation v. individual	.262	(.326)
Case characteristics - complexity and invested resources:		
Number of substantial written motions	.051	(.046)
Number of hearings	-.011	(.111)
Length of proceedings (log)	.659***	(.159)
Constant	-4.37***	(.841)
N	349	
Nagelkerke R Square	.339***	
Reduction in classification error from naive model	10.6%	

*, ** and *** denote significance levels of 10 percent, 5 percent, and 1 percent, respectively.

23. *Estimating the effects of the prevailing litigant on costs amounts*

Table 7 reports the results of key variables in the linear regression models B(1) and B(2), which estimate the effects of the prevailing litigant on cost-shifting amounts (in log transformation of NIS) in cases adjudicated on the merits.[33] In both models,

[33] Only in cases in which costs were shifted; cases in which costs were not shifted are inconsistent with the assumption of the linear models (these cases would be assigned a zero value in the dependent variable of costs amounts), which is why we ruled out their inclusion in these analyses – see Eisenberg et. al, 2015.

plaintiff prevalence is positively and significantly associated with the amount of costs rewarded (coefficients of 1.697 and 1.463, respectively).

Table 7: Linear regression models of cost-shifting amounts

	Model B(1)		Model B(2)	
Prevailing litigant:				
Defendant prevalence	reference			
Plaintiff prevalence	1.697*	(.541)	1.463**	(.464)
Costs requested by prevailing litigant:				
Costs not requested	reference			
Costs requested	.21*	(.166)		
Litigant characteristics:				
Individual v. individual	reference			
Individual v. corporation	-.004	(.22)	-.53	(.281)
Corporation v. corporation	.409*	(.222)	-2.341*	(.696)
Corporation v. individual	.469*	(.262)	-.535	(.628)
Case characteristics – complexity and invested resources:				
Number of substantial written motions	-.012	(.16)	.299***	(.053)
Number of hearings	.1**	(.049)	-1.2***	(.25)
Claim amount (log)	.52***	(.047)	-.186	(.284)
Amount of requested costs (log)			.631***	(.172)
Constant	1.697***	(.541)	8.978**	(2.602)
N	226		108	
Adjusted R Square	.638***		.949***	

*, ** and *** denote significance levels of 10 percent, 5 percent, and 1 percent, respectively.

From model B(1) it is clear that request of costs by the prevailing litigant not only raises the probability for cost shifting as shown in table 6, but also increases the amount of these costs (the independent variable "costs requested by prevailing litigant" has a positive coefficient of 0.21, and is statistically significant). Model B(2) further analyzes the effect of requesting costs by adding a variable for the specific amount of costs requested by the litigant, when such a specified request was made.[34] From this model we learn that the amount of requested costs has a significant and positive effect on the amount of costs shifted in favor of the prevailing litigant (the "amount of

[34] Thereby reducing the number of observations in Model B(2) from 226 to 108. In this model, the dichotomous variable "costs requested by prevailing litigant" becomes redundant.

requested costs" variable has a positive and statistically significant coefficient of 0.631, and the entire model has an Adjusted R Square of 0.949).

In these analyses, as in the logistic regression, there are only a small number of variables with statistical significance aside from litigant prevalence and the request of costs.[35] In model B(1), costs amounts were higher when the plaintiff was a corporation, regardless of whether the defendant was an individual or a corporation. Interestingly, in model B(2), when the variable for amount of requested costs was added, the coefficients for these plaintiff-defendant combinations became negative and their significance was diminished. From this we can conclude that corporate plaintiffs tend to request higher amounts of costs than individual plaintiffs. Finally, in model B(1) the number of hearings and the amount of the claim are significantly and positively associated with the costs amounts.

VI. Discussion

Our findings show that there are asymmetries between plaintiffs and defendants in civil trial courts. We present empirical evidence for a consistent plaintiff advantage across all civil cases, such that prevailing plaintiffs are granted costs more frequently, and the amounts of costs granted are higher, than those awarded to prevailing defendants. This pro-plaintiff effect survives a more integrative approach applied in the subgroup of cases adjudicated on the merits, when taking into consideration a large number of characteristics that should conceivably influence cost shifting. The pro-plaintiff effect can be partially attributed to plaintiffs and defendants portraying different cost-requesting behavior, yet persists when request of costs is held constant. Descriptive data shows that request of costs may also be an influencing factor in all cases, among all disposition categories.

[35] The variables accounted for in these regressions are identical to those controlled for in the logistic regression, with the following exceptions: 1) The variable for court instance was excluded because it is highly correlated with the amount of the claim (district courts hear claims of higher amounts), thereby leading to multicollinearity. 2) The variable for tort cases was excluded due to the small number of tort cases in the database concluded via adjudication on the merits (which corresponds with the small proportion of tort cases adjudicated on the merits amongst the population of civil cases – see Weinshall et. al., 2015). 3) Variables for the granted relief and the proportionality between the claim and the granted relief were excluded since they apply only to cases in which the plaintiff prevailed.

A. *Request of costs - a partial explanation*

This surprising finding regarding request of costs leads to two interesting issues that deserve to be addressed in future research: First, why do plaintiffs and defendants behave differently? It could be suggested that litigants who have more knowledge of the formal and informal characteristics of the judicial system, such as repeat players, have learned that it is beneficial to request costs. Moreover, these repeat players may have actively contributed, in their recurrent interactions with judges and other legal actors, to creating this dominant trait of the cost-shifting regime (Galanter, 1974). Indeed, our findings show that plaintiff-corporations are granted more and higher costs because they ask for them. However, when we controlled for litigant status, we still found a difference between plaintiffs and defendants in their cost-requesting behavior, so that the answer lies in inherent differences between plaintiffs and defendants. Experimental designs could assist in shedding light on this issue, for example by assigning individuals to the role of plaintiffs and defendants and examining variations in their behavior and decision-making processes that arise solely from their litigant identity (all other things being equal).

Second, why is request of costs an influencing factor on judicial behavior? Request of costs by litigants does not promote any of the rationales of cost shifting, while at the same time, considerations that should affect the judicial cost shifting decision were not found to be influential. These findings point towards an adversarial system of costs in which the judges are bystanders and "approvers" rather than initiators. And while legal systems with common law traditions, among them Israel, are fundamentally adversarial, cost shifting is non-adversarial in nature and is not meant to be influenced by the requests of the parties. We suggest two plausible explanations: The first is the "anchoring effect", a cognitive bias by which people making numeric estimates rely on a given reference point – an anchor – and do not sufficiently adjust away from the anchor, such that their final estimate is inordinately affected by that anchor (Tversky & Kahnman, 1974). Studies have found significant anchoring biases in the courts (Teichman & Zamir, 2014; Campbell, 2016), and that judges, like other people, are perceptible to numeric anchors, which trigger intuitive, automatic processing of judicial decisions (Rachlinsky et. al, 2006; Guthrie et. al, 2007). An additional possible

explanation, which can be examined in further qualitative research, is that judges prefer not to initiate costs proceedings but only to respond to motions from litigants because they are under immense workloads and time constraints, which often may result in what has been dubbed "judicial inactivism" (Oldfather, 2006). And while per each individual case it may be true that costs proceedings are somewhat time consuming and can be viewed as procedural and therefore dispensable, if implemented effectively and systematically cost shifting can actually be facilitated in reducing judicial workloads, by deterring frivolous claims from being filed or defended in the courts, or by sanctioning litigant behavior during trial.

B. *Other explanations for the pro-plaintiff effect - a pro-plaintiff bias by judges?*

Since the pro-plaintiff effect is still evident once cost-requesting variables are accounted for, how should we interpret these findings? Application of cost-shifting rules in loser pays regimes, in which the indemnification rationale is dominant, is based primarily upon the case outcome. Thus, the rational expectation is symmetry between prevailing litigants, barring exceptions that may arise from implementation of other rationales of cost shifting. However, our analyses found that very few of the relevant considerations affect the cost-shifting decision, let alone pro-plaintiff cost allocation (keeping in mind aforementioned limitations of the indicators used for litigant behavior and for resource disparities). In fact, the only consistent difference between plaintiffs and defendants related to cost shifting is that plaintiffs, unlike defendants, pay filing fees. This difference could perhaps be relevant as a slight reflection of the indemnification rationale, especially in the district courts in which the filing fees are substantially higher. However, the results do not align with this explanation since the effect is also evident in the magistrate courts, and especially because filing fees are only a nominal part of the plaintiffs' costs (Hodges et. al. (2009); Reimann (2012)).

It is yet unclear what other factors could account for the pro-plaintiff effect. Though we cannot rule out unobserved variables that may have been omitted in our regression models, a plausible interpretation of the results is that there is an implicit judicial pro-plaintiff bias in effect. Under basic principles of fairness and equality in the

justice system, there is no justification for such a bias - litigants should fare equally, in all stages of the proceedings, based on the merits of their case. And yet if such a bias has evolved, most probably without the judges being overly conscious of its existence, what could be the reasons for it? Possibly trial judges are sympathetic to plaintiffs, and view denial of costs or allocation of low amounts of costs as a relatively harmless way in which to avoid placing an additional burden on a plaintiff who suffered losses, even if she did not sufficiently prove that the defendant is responsible for these losses? Or perhaps judges utilize the cost-shifting tool in order to encourage plaintiffs' litigiousness and thus, in their view, to improve access to justice and public confidence in the courts? These and additional possible explanations for a pro-plaintiff bias are core issues of judicial decision-making processes and need to be explored in future research using observational quantitative and qualitative methods, and especially by use of experimental methodologies.

C. *Implications for policymakers*

Regardless of the underlying reasons for the asymmetry, the evidence is clear - there is a pro-plaintiff effect at work in this particular dimension of civil litigation. This identification of an asymmetry between litigants furthers our understanding regarding the inner workings and realities of civil court systems in all cases, among all disposition methods. In addition, it helps us to understand the balance of powers between litigants in the courts and may point towards other possible asymmetries between litigants. The practical implications for legal policymakers are twofold: First, the finding that plaintiffs receive more costs than defendants simply because they ask for them is problematic from a policy point of view. It denudes the cost-shifting device from its purposes and policy aims, be it indemnification, deterrence against frivolous claims, promoting access to justice, a behavioral sanction during trial, etc. Moreover, the wider implications of these findings are that plaintiffs in the civil justice system have an advantage over defendants that is incompatible with procedural and substantive values of equality in litigation (Rubenstein, 2002; Rosen-Zvi, 2015). The effects of such asymmetries are possibly far-reaching (Hadfield, 2005), and may be pervasive before, throughout and at the end of the proceedings. Thus, before the proceedings, inequality in cost shifting can adversely affect the decisions of potential

plaintiffs and defendants, by putting potential defendants at a distinct disadvantage regarding their bargaining capabilities, or by overly deterring potential defendants from defending their claims. During the proceedings, unequal implementation of the cost-shifting rule can cause plaintiffs to behave more recklessly than defendants and to generate unnecessary expenses or delays. It can overly threaten defendants into accepting settlements they might have otherwise not been inclined to agree to. And finally, the overall outcomes of the proceedings become unequal, since like cases *do not* reach like results.

Various interventions or reforms can be suggested in order to mitigate these effects and to ameliorate disparities between litigants. The most obvious possibility may be to limit the judicial discretion in the Israel fee regime, for example by employing official or even statutory tariffs of recoverable attorney fees and other costs. However, comparative perspectives of fee regimes (though for the most part lacking empirical evidence regarding the de facto regimes) teach us that various regulatory approaches of cost allocation rules do not necessarily achieve more success in realizing the cost-shifting rationales (Reimann, 2012). So changing the rules may not be the answer. Other, less rigid measures, can focus on ways to assist judges in overriding biases and intuitions in their decision-making processes (Guthrie et. al, 2007). For example, the judiciary can hold seminars for judges in which these findings can be presented and discussed, as well as in which to learn about cognitive biases and how to overcome or at least interrupt them. In addition, judicial peer-review processes can be carried out to provide judges with feedback regarding cost-shifting scenarios and to discuss real-life costs of trial and attorney fees. Another possibility can be to require judges to write brief justifications in their decisions to grant or deny costs. This could serve to reduce judicial inactivism (Oldfather, 2006) as well as enable judges to overcome intuitive reactions by engaging in an internal process of deliberation, thus assessing the decision more logically and carefully (Guthrie et. al., 2007; Rosen-Zvi, 2015).

VII. Conclusion

We set out to examine whether there are asymmetries between plaintiffs and defendants in civil courts. Inferring litigant asymmetry has proven difficult, as analysis based on case-outcome data suffers from a lack of a baseline as well as from selection effects. We overcome the lack of a baseline by analyzing the interactions between the substantial outcomes of civil cases and the cost-shifting outcomes of the cases. By using a unique dataset that includes all case disposition possibilities, across a wide range of case and litigant characteristics, we are able to mitigate some of the selection bias limitations, while enriching the general civil litigation discourse beyond cases adjudicated on the merits.

Our findings show compelling evidence for a pro-plaintiff effect in the courts, such that prevailing plaintiffs are granted more and higher costs than prevailing defendants. In non-contested cases, this phenomenon is explained, but not justified, by the manner in which the case was resolved. In adjudicated cases, the effect is partially explained by different behaviors exhibited by plaintiffs and defendants regarding request of costs, yet persists when these variables are 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.

This study holds two unique contributions. First, it provides an initial answer to the question of litigant asymmetry. In this regard, our approach highlights a specific dimension of civil litigation, and we are not purporting to infer a broader pro-plaintiff effect and bias. Our findings, showing asymmetry between litigants in the fee-shifting domain, call for further investigation regarding litigant behavior, judicial biases and asymmetries between legal players. Many of these issues can be best approached by using experimental methods specifically designed for the analysis of legal doctrines, principles and phenomena (for example, Zamir & Ritov, 2010; Zamir & Ritov, 2012, Sulitzeanu-Kenan, et. al., forthcoming). These methodologies can be especially beneficial in inferring causation of the effects identified herein because of the complexity of the civil litigation system and due to the plethora of potentially relevant factors. Second, cost-shifting mechanisms, which have received widespread

theoretical attention due to their potentially significant impact on all stages of civil litigation, are severely lacking in complementary empirical evidence. Our case study of the fee regime in Israel provides a comprehensive empirical study of costs and reveals significant gaps between policy intentions and their implementation. The identified pro-plaintiff effect leads to inconsistent, incongruent, and at times, even absurd outcomes, which require prompt attention by policymakers.

To conclude, notwithstanding their limitations, our findings hold implications for legal policymakers interested in promoting a balanced and fair civil justice system.

VIII. Bibliography

Campbell, E. J., Chao, B., Robertson, T. C. and Yokum, V. D., (2016), "Countering the Plaintiff's Anchor: Jury Simulations to Evaluate Damages Arguments", ***Iowa Law Review*** 101(2), 543-571.

Clermont, M. K. and Eisenberg, T., (1995), "Exorcising the Evil of Forum-Shopping", ***Cornell Law Review*** 80, 1507.

Clermont, M. K. and Eisenberg, T., (1996), "Xenophilia in American Courts", ***Harvard Law Review*** 109, 1120.

Clermont, M. K. and Eisenberg, T., (1998), "Do Case Outcomes Really Reveal Anything about the Legal System? Win Rates and Removal Jurisdiction", ***Cornell Law Review*** 83, 581-607.

Clermont, M. K. and Eisenberg, T., (2001), "Appeal from Jury or Judge Trial: Defendants' Advantage", ***American Law and Economics*** 3(1), 125-164.

Clermont, M. K. and Eisenberg, T., (2007), "Xenophilia or Xenophobia in U.S. Courts? Before and After 9/11", ***Journal of Empirical Legal Studies*** 4(2), 441-464.

Clermont, M., K., (2009), "Litigation Realities Redux", ***Notre Dame L. Rev*** 84(5), 1919-1974.

Cohen, H. T., (2008), "General Civil Jury Trial Litigation in State and Federal Courts: A Statistical Portrait", ***Journal of Empirical Legal Studies*** 5(3), 593-617.

Edwards, T. H. and Elliott, L., (2002), "Beware of Numbers (and Unsupported Claims of Judicial Bias)", ***Washington University law Quarterly*** 80, 723-738.

Eisenberg, T., Goerdt, J., Ostrom, B. and Rottman, D., (1995), "Litigation Outcomes in State and Federal Courts: A Statistical Portrait", ***Seattle University Law Review*** 19, 433-453

Eisenberg, T. and Farber, H. S., (1997), "The Litigious Plaintiff Hypothesis: Case Selection and Resolution", ***Rand Journal of Economics*** 28, 92-112.

Eisenberg, T. and Heise, M., (2009), "Plaintiphobia in State Courts? An Empirical Study of State Court Trials on Appeal", ***The Journal of Legal Studies*** 38(1), 121-155.

Eisenberg, T., and Lanvers, C., (2009), "What is the Settlement Rate and Why Should We Care?", ***Journal of Empirical Legal Studies*** 6(1), 111-146.

Eisenberg, T., Fisher, T., and Rosen-Zvi, I., (2013), "When Courts Determine Fees in a System with a Loser Pays Norm: Fee Awards and Denials to Winning Plaintiffs and Defendants", ***UCLA Law Review*** 60, 1452-1493.

Eisenberg, T. and Miller, P. M., (2013), "The English Versus the American Rule on Attorney Fees: An Empirical Study of Public Company Contract", ***Cornell Law Review*** 98, 327.

Eisenberg, T. and Farber, H. S., (2013), "Why Do Plaintiffs Lose Appeals? Biased Trial Courts, Litigious Losers, or Low Trial Win Rates?", ***American Law and Economics Review*** 15(1), 73-109.

Eisenberg, T., Fisher, T., and Rosen-Zvi, I., (2014), "Attorney Fees in a Loser Pays System", ***University of Pennsylvania Law Review*** 162(7), 1619 – 1661.

Eisenberg T., Eisenberg T., Wells, T.M. and Zhang, M., (2015), "Addressing the Zeros Problem: Regression Models for Outcomes with a Large Proportion of Zeros, with an Application to Trial Outcomes", ***Journal of Empirical Legal Studies*** 12(1), 161-186.

Eisenberg, T. and Heise, M., (2015), "Plaintiphobia in State Courts Redux? An Empirical Study of State Court Trials on Appeal", ***The Journal of Legal Studies*** 12(1), 100-127.

Engel, C., (2014), "Behavioral Law and Economics: Empirical Methods", in: Zamir, E. and Teichman, D., (Eds.), **The Oxford Handbook of Behavioral Economics and the Law**, Oxford University Press, 125-142.

Fisher, T. and Rosen-Zvi, I., (2012), " It's for the Judges to Decide: Allocation of Trial Costs in Israel – Report on Israel", in: Reimann, M., (Ed.), **Cost and Fee Allocation in Civil Procedure**, Ius Gentium: Comparative Perspectives on Law and Justice 11, Springer, 177-184.

Galanter, M., (1974), "Why the 'Haves' Come out Ahead: Speculation on the Limits of Legal Change", ***Law and Society Review*** 9(1), 95-160.

Galanter, M., (2004), "The Vanishing Trial: an Examination of Trials and Related Matter in Federal and State Courts", ***Journal of Empirical Legal Studies*** 1(3), 459.

Genn, H., (2009), **Judging Civil Justice - The Hamlyn Lectures 2008**, Cambridge University Press, New York.

Goren, U., (2013), **Civil Procedure Issues** (Eleventh Edition), Syaga Publishing Ltd. (Hebrew)

Gryphon, M., (2008), "Greater Justice, Lower Cost: How a Loser pays Rule Would Improve the American Legal System", ***11 Civil Report, Manhattan Institute.***

Guthrie, C., Rachlinski, J. J. and Wistrich, J. A., (2007), "Blinking on the Bench: How Judges Decide Cases", ***Cornell Law Review*** 93(1), 1-43.

Hadfield, G. K., (2004), "Where have all the Trials Gone? Settlements, Non-Trial Adjudications, and Statistical Artifacts in the Changing Dispositions of Federal Civil Cases", ***Journal of Empirical Legal Studies*** 1(3), 705-734.

Hadfield, G. K., (2005), "Exploring Economic and Democratic Theories of Civil Litigation: Differences between Individual and Organizational Litigants in the Disposition of Federal Civil Cases", ***Stanford Law Review*** 57(5), 1275-1327.

Hirsch, A. and Sheehey, D., (2005), "Awarding Attorney Fees and Managing Fee Litigation, Second Edition", ***Federal Judicial Center.***

Hodges, C. H., Vogenauer, S. and Tulibacka, M., (2009), "Costs and Funding of Civil Litigation: A Comparative Study", ***Oxford Legal Studies Research Paper*** 55, 84-118.

Huang, K., (2008), "How Legal Representation Affects Case Outcomes: An Empirical Perspective from Taiwan", ***Journal of Empirical Legal Studies*** 5(2), 197-238.

Huang, K., (2009), "Does Discovery Promote Settlement? An Empirical Answer", ***Journal of Empirical Legal Studies*** 6(2), 241-278.

Hughes, W. J. and Snyder, A. E., (1995), "Litigation and Settlement under the English and American Rules: Theory and Evidence", ***Journal of Law and Economics*** 38(1), 225-250.

Huntley, G., Taylor, P., and Bradstock, S., (2010), "At What Costs? A Lovell's Multi Jurisdictional Guide to Litigation Costs", available at http://m.hoganlovells.com/files/Publication/c940bb4b-a67f-4e63-a5b8-ced6198b2125/Presentation/PublicationAttachment/fff33267-29d5-4230-a140-cf2eeb7d4a05/LitigationCostsReport.pdf (last viewed Feb. 21 2016).

Hylton, N. K., (1993), "Asymmetric Information and the Selection of Disputes for Litigation", ***The Journal of Legal Studies*** 22(1), 187-210.

Inglis, L., McCabe, K., Rassenti, S., Simmons, D. and Tallroth, E., (2005) "Experiments on the Effects of Cost-Shifting, Court Costs, and Discovery on the Efficient Settlement of Tort Claims", ***Florida State University Law Review*** 33, 89-117

Kahneman, D. and Tversky, A., (1979), "Prospect Theory: An Analysis of Decision under Risk", **Econometrica** 47, 263–291.

Kessler, D., Meites, T. and Miller, G., (1996), "Explaining Deviations from the Fifty-Percent Rule: A Multimodal Approach to the Selection of Cases for Litigation", ***The Journal of Legal Studies*** 25, 233-259.

Kritzer, M. H., (2009), "Fee Regimes and the Cost of Civil Justice", ***Civil Justice Quarterly*** 28(3) 342.

Oldfather, M.C., (2006), "Remedying Judicial Inactivism: Opinions as Informational Regulations", ***Florida Law Review*** 58(4), 743-801.

Partingon, M., (2010), "Empirical Legal Research and Policy-making", in: Cane P. and Kritzer M.H., (Eds.), **The Oxford Handbook of Empirical Legal Research**, Oxford University Press, 1003-1024.

Priest, L. G., and Klein, B., (1984), "The Selection of Disputes for Litigation", ***The Journal of Legal Studies*** 13(1), 1-56.

Shapard, E. J., (1995), "Likely Consequences of Amendments to Rule 68, Federal Rules of Civil Procedure", ***Federal Judicial Center***.

Shavell, S., (1996), "Any Frequency of Plaintiff Victory at Trial is Possible", ***The Journal of Legal Studies*** 25, 493-501.

Waldfogel, J., (1995), "The Selection Hypothesis and the Relationship between Trial and Plaintiff Victory", ***Journal of Political Economy*** 103(2), 229-260.

Rachlinsky, J. J., (1996), "Gains, Losses, and the Psychology of Litigation, ***Southern California Law Review*** 70, 113-185.

Rachlinky, J.J., Guthrie, C. and Wistrich, J. A., (2006), "Inside the Bankruptcy Judge's Mind", ***Boston University Law Review*** 86, 1227-1265.

Reimann, M., (2012), " Cost and Fee Allocation in Civil Procedure: A Synthesis ", in: Reimann, M., (Ed.), **Cost and Fee Allocation in Civil Procedure**, Ius Gentium: Comparative Perspectives on Law and Justice 11, Springer, 3-56.

Rosen-Zvi, I., (2010), "Just Fee Shifting", ***Florida State University Law Review*** 37, 717.

Rosen-Zvi, I., (2015), **The Civil Process,** Sacher Institute: Hebrew University Press (Hebrew).

Rubenstein, W. B, (2002), "The Concept of Equality in Civil Procedure", ***Cardozo Law Review*** 23(5), 1865-1915.

Sulitzeanu-Kenan, R., Kremnitzer, M. and Alon, S., (forthcoming). "Facts, Preferences, and Doctrine: An Empirical Analysis of Proportionality Judgment", ***Law & Society Review***.

Tversky, A. and Kahneman, D., (1974), "Judgment under Uncertainty: Heuristics and Biases", ***Science*** New Series 185(4157), 1124-1131.

Weinshall-Margel, K., Galon, I. and Taraboulos, I., (2015), "Creating a Case Weight Index for Measuring Judicial Workload", ***Mishpatim*** 44(3), 769-834 (Hebrew).

Zamir, E. and Ritov, I., (2010), "Revisiting the Debate over Attorneys' Contingent Fees: A Behavioral Analysis", ***The Journal of Legal Studies*** 39, 245-287.

Zamir, E. and Ritov, I., (2012), "Loss Aversion, Omission Bias, and the Burden of Proof in Civil Litigation", ***The Journal of Legal Studies*** 41(1), 165-207.

Zamir, E., (2012), "Loss Aversion and the Law", ***Vanderbilt Law Review*** 65(3), 829-894.

Zamir, E. and Teichman, D., (2014), "Judicial Decisionmaking: A Behavioral Perspective", in: Zamir E. and Teichman D., (Eds.), **The Oxford Handbook of Behavioral Economics and the Law**, Oxford University Press, 664-702.

Appendix - Data Codebook

* Missing values for all variables: -99 = irrelevant; -98 = missing data

TABLE OF CONTENTS FOR VARIABLES:

FILING AND CLOSING VARIABLES

Variable #1

Variable Name:	encoder
Definition:	Identity of encoder
Measurement Unit:	Nominal
Valid Values	*Numeric code* 1-9

Variable #2

Variable Name:	date_open
Definition:	The date in which the case was submitted to the courts
Measurement Unit:	Date

Variable #3

Variable Name:	date_close
Definition:	The date in which the final decision resolving the case was given
Measurement Unit:	Date

Variable #4

Variable Name:	length_of_proceedings
Definition:	Length of proceedings (in days) from case filing to its disposition
Measurement Unit:	Interval

Variable #5

Variable Name:	court_name
Definition:	Geographic location of the court
Measurement Unit:	Nominal

Valid Values

Numeric code	*Value label*
12	District – Nazareth
13	District – Haifa
14	District – Jerusalem
15	District - Tel Aviv
896	District - Lod (Central)
16	District - Beer Sheva
17	Magistrate – Nazareth
18	Magistrate – Tiberias
19	Magistrate - Beth Shean
20	Magistrate – Zefat
21	Magistrate – Afula
22	Magistrate - Kiryat Shmona
23	Magistrate – Kazerin
24	Magistrate – Masade
25	Magistrate – Krayot
26	Magistrate – Haifa

27	Magistrate – Acre
28	Magistrate – Hadera
29	Magistrate – Nahariya
30	Magistrate – Jerusalem
31	Magistrate - Beit Shemesh
32	Magistrate - Tel Aviv
33	Magistrate - Ramat Gan family court
34	Magistrate – Herzelia
35	Magistrate - Petach Tikva
36	Magistrate – Ramle
37	Magistrate – Rehovot
38	Magistrate – Natanya
39	Magistrate - Kfar Saba
40	Magistrate - Rishon Lezion
41	Magistrate - Beer Sheva
42	Magistrate – Ashkelon
43	Magistrate – Ashdod
44	Magistrate - Kiryat Gat
45	Magistrate – Dimona
46	Magistrate - Eilat

Variable #6

Variable Name:	court_instance
Definition:	The instance of the court – magistrate or district
Measurement Unit:	Nominal
Valid Values	*Numeric code* — *Value label* 1 — District court 2 — Magistrate court

Variable #7

Variable Name:	case_proceeding
Definition:	The type of case procedure
Measurement Unit:	Nominal
Valid Values	*Numeric code* — *Value label* 1 — Civil 2 — Small claims

Variable #8

Variable Name:	case_num
Definition:	The case filing number
Measurement Unit:	String

Variable #9

Variable Name:	linked_cases
Definition:	Filing number of linked cases, such as appeals
Measurement Unit:	String

Variable #10

Variable Name:	case_type
Definition:	The procedure of the case as defined in "Net Hamishpat"
Measurement Unit:	Nominal

Valid Values

Numeric code	*Value label*
1	Regular procedure
2	Fast track
3	Shortened track
13	Small claim
10034	Simple track (by way of depositions)
10035	Simple track for arbitration matters
10036	Class action
10037	Enforcement agency (bills)
10120	Enforcement agency (uncontested claim)
10177	Protection order
10199	Eviction procedure

Variable #11

Variable Name:	case_matter_grouped
Definition:	The primary legal matter of the case as defined in "Net Hamishpat"
Measurement Unit:	Nominal

Valid Values

Numeric code	*Value label*
1	Arbitration issues

	2	Claims in accordance with Regulations 3 of the Court Regulations (Fees)
	3	Banks and credits
	4	Enforcement agency (biils)
	5	Contracts
	6	Declarative – general
	7	Monetary - general
	8	Defamation
	9	Property
	10	Personal injury
	11	Automobile tort cases (personal injury)
	12	Protection from harassment
	13	Intellectual property
	14	Insurance
	15	Class action
	16	Tourism (for small claims)
	17	Rent issues (for small claims)
	18	Vehicle property damage (for small claims)
	19	Client-provider
	20	Enforcement agency (objection to claim enforcement)
	21	Tort
	22	Vehicle property damage
	23	Eviction (not in accordance with the Protection of Tenants Act, 1972)
	24	Institutional debt claims

Variable #12

Variable Name:	disposition_grouped	
Definition:	method of disposition of the case	
Measurement Unit:	Nominal	
Valid Values	*Numeric code*	*Value label*
	1	adjudication on the merits/ judgment by way of consent under section 79a(a) of the Israel Courts' Act
	2	default judgment
	3	court-approved settlement
	5	lack of prosecution
	6	out-of-court settlement
	7	voluntary withdrawal
	8	other – statistical closing; joinder of claims; etc.

Variable #13

Variable Name:	result
Definition:	litigant prevalence

Measurement Unit:	Nominal
Valid Values	*Numeric code* *Value label* 1 complete plaintiff prevalence 2 defendant prevalence 11 partial plaintiff prevalence

Variable #14

Variable Name:	result_grouped
Definition:	litigant prevalence - grouped
Measurement Unit:	Nominal
Valid Values	*Numeric code* *Value label* 0 defendant prevalence 1 plaintiff prevalence

Variable #15

Variable Name:	open_again_date
Definition:	If the case was reopened after being resolved, the date of the original resolution
Measurement Unit:	Date

Variable #16

Variable Name:	comments_open_again
Definition:	If the case was reopened after being resolved, how was the case originally resolved
Measurement Unit:	String

Variable #17

Variable Name:	comments_general
Measurement Unit:	String

JUDGE VARIABLES

Variable #18

Variable Name:	case_allocation
Definition:	Was the case allocated to a judge/ registrar?
Measurement Unit:	Nominal
Valid Values	*Numeric code* — *Value label* 0 — The case was allocated to a judge / registrar 1 — The case was not allocated (disposed of by the secretariat)

Variable #19

Variable Name:	judge_kdam
Definition:	The judge in the preliminary proceedings
Measurement Unit:	Nominal
Valid Values	*Numeric code* 1-999

Variables #20-22

Variable Name:	judge_1, judge_2, judge_3
Definition:	The primary judge who handled the case, and additional judges who handled the case
Measurement Unit:	Nominal
Valid Values:	*Numeric code* 1-999

Variable #23

Variable Name:	comments_judges
Measurement Unit:	String

PLAINTIFFS AND THEIR ATTORNEYS VARIABLES

Variables #24

Variable Name:	cnt_plaintiffs
Definition:	Number of plaintiffs in the case
Measurement Unit:	Interval

Variables #25-27

Variable Name:	plaintiff_1, plaintiff_2, plaintiff_3
Definition:	The names of the first three plaintiffs (if the plaintiff is an individual - code 1)
Measurement Unit:	String

Variables #28-31

Variable Name:	plntf_1_type, plntf_2_type, plntf_3_type
Definition:	classification of plaintiffs 1-3
Measurement Unit:	Nominal
Valid Values	*Numeric code* — *Value label* 1 — individual 2 — state - government and public authorities 3 — state - attorney general of Israel 4 — state - regional and local 5 — corporation 6 — non-profit organization, association 7 — partnership 8 — cooperative 9 — bank

Variables #32-34

Variable Name:	plntf_1_company, plntf_2_company, plntf_3_company
Definition:	The company type of plaintiffs 1-3
Measurement Unit:	Nominal
Valid Values	*Numeric code* — *Value label* 1 — insurance

2	communication
3	transportation
4	tourism
5	industry and commerce
6	finance
7	security
8	electricity
9	water
10	construction and housing
11	energy
12	agriculture
13	culture, art and education
14	other
15	high-tech, patents, R&D

Variables #35-37

Variable Name:	plntf_1_lawyer, plntf_2_lawyer, plntf_3_lawyer
Definition:	plaintiffs 1-3' lawyers
Measurement Unit:	String

Variables #38-40

Variable Name:	plntf_1_lawyer_sex, plntf_2_lawyer_sex, plntf_3_lawyer_sex
Definition:	The sex of plaintiffs 1-3's lawyers
Measurement Unit:	Nominal
Valid Values	*Numeric code* — *Value label* 0 — female 1 — male

Variables #41-43

Variable Name:	plaintiff_1_firm_name, plaintiff_2_firm_name, plaintiff_3_firm_name
Definition:	The law firm names of the first three plaintiffs' lawyers
Measurement Unit:	String

Variables #44-46

Variable Name:	plaintiff_1_firm_size, plaintiff_2_ firm_size, plaintiff_3_ firm_size

Definition:	The number of attorneys in the law firm of the first three plaintiffs' lawyers
Measurement Unit:	Interval

Variables #47

Variable Name:	comments_plaintiffs
Measurement Unit:	String

DEFENDANTS AND THEIR ATTORNEYS VARIABLES

Variables #48

Variable Name:	cnt_defendants
Definition:	number of defendants in the case
Measurement Unit:	Interval

Variables #49-51

Variable Name:	dfn _1, dfn _2, dfn _3
Definition:	The names of the first three defendants (if the defendants is an individual – code 1)
Measurement Unit:	String

Variables #52-54

Variable Name:	dfn_1_type, dfn _2_type, dfn _3_type
Definition:	classification of defendants 1-3
Measurement Unit:	Nominal
Valid Values	*Numeric code* — *Value label* 1 — individual 2 — state – government and public authorities 3 — state – attorney general of Israel 4 — state – regional and local 5 — corporation 6 — non-profit organization, association 7 — partnership 8 — cooperative

	9	bank

Variables #55-57

Variable Name:	dfn_1_company, dfn _2_company, dfn _3_company
Definition:	the company type of defendants 1-3
Measurement Unit:	Nominal

Valid Values

Numeric code	*Value label*
1	insurance
2	communication
3	transportation
4	tourism
5	industry and commerce
6	finance
7	security
8	electricity
9	water
10	construction and housing
11	energy
12	agriculture
13	culture, art and education
14	other
15	high-tech, patents, R&D

Variables #58-60

Variable Name:	dfn _1_lawyer, dfn _2_lawyer, dfn _3_lawyer
Definition:	defendants 1-3' lawyers
Measurement Unit:	String

Variables #61-63

Variable Name:	dfn_1_lawyer_sex, dfn _2_lawyer_sex, dfn _3_lawyer_sex
Definition:	The sex of defendants 1-3's lawyers
Measurement Unit:	Nominal

Valid Values

Numeric code	*Value label*
0	female
1	male

Variables #64-66

Variable Name:	dfn _1_firm_name, dfn _2_firm_name, dfn _3_firm_name
Definition:	The law firm names of the first three defendants' lawyers
Measurement Unit:	String

Variables #67-69

Variable Name:	dfn_1_firm_size, dfn_2_ firm_size, dfn_3_ firm_size
Definition:	The number of attorneys in the law firm of the first three defendants' lawyers
Measurement Unit:	Interval

Variables #70

Variable Name:	comments_defendants
Measurement Unit:	String

THIRD PARTY VARIABLES

Variables #71

Variable Name:	notice_thrd_party
Definition:	Was a notice sent to third parties?
Measurement Unit:	Nominal
Valid Values	*Numeric code* — *Value label* 1 — A third party notice was sent (no court approval required) 2 — A third party notice was sent (court approval required – in specific case types) 3 — Court approval for third party notice was denied 4 — Third party notice was not requested

Variables #72

Variable Name:	cnt_thrd_parties

Definition:	number of all additional parties participating in the proceeding, other than the plaintiffs and defendants
Measurement Unit:	Interval

Variables #73

Variable Name:	hagana_third_party
Definition:	Did one of the third parties file a defense?
Measurement Unit:	Nominal
Valid Values	*Numeric code* — *Value label* 0 — A third party filed a defense 1 — None of the third parties filed a defense

Variables #74

Variable Name:	comments_thrd_party
Measurement Unit:	String

PLEADINGS VARIABLES

Variables #75

Variable Name:	total_tvia_pages
Definition:	total number of pages in the claim (including ancillary documents)
Measurement Unit:	Interval

Variables #76

Variable Name:	tvia_pages
Definition:	net number of pages in the claim
Measurement Unit:	Interval

Variables #77

Variable Name:	hugash_hagana
Definition:	Was a defense submitted by the defendants?

Measurement Unit:	Nominal
Valid Values	*Numeric code* — *Value label* 0 — a defense was submitted by the defendants 1 — no defense was submitted by the defendants

Variables #78

Variable Name:	hagana_filing_date
Definition:	filing date of the defense
Measurement Unit:	Date

Variables #79

Variable Name:	total_hagana_pages
Definition:	total number of pages in the defense (including ancillary documents)
Measurement Unit:	Interval

Variables #80

Variable Name:	hagana_pages
Definition:	net number of pages in the defense
Measurement Unit:	Interval

Variables #81

Variable Name:	tvia_shekenged
Definition:	Was a counterclaim submitted by the defendants?
Measurement Unit:	Nominal
Valid Values	*Numeric code* — *Value label* 0 — A counterclaim was submitted by the defendants 1 — No counterclaim was submitted by the defendants

Variables #82

Variable Name:	shekenged_filing_date

Definition:	filing date of the counterclaim
Measurement Unit:	Date

Variables #83

Variable Name:	hugash_tshuva
Definition:	Was an answer to the defense submitted?
Measurement Unit:	Nominal
Valid Values	*Numeric code* — *Value label* 0 — An answer was submitted 1 — No answer was submitted

Variables #84

Variable Name:	tshuva_filing_date
Definition:	filing date of the answer to the defense
Measurement Unit:	Date

Variables #85

Variable Name:	comments_filings
Measurement Unit:	String

MOTIONS VARIABLES

Variable #86

Variable Name:	count_p_motions
Definition:	number of written motions filed by the plaintiffs during the proceedings
Measurement Unit:	Interval

Variable #87

Variable Name:	count_d_motions

Definition:	number of written motions filed by the defendants during the proceedings
Measurement Unit:	Interval

Variable #88

Variable Name:	cnt_motions_after_closing
Definition:	number of written motions filed by plaintiffs or defendants after termination of proceedings
Measurement Unit:	Interval

Variables #89

Variable Name:	comments_motions
Measurement Unit:	String

HEARINGS VARIABLES

Variable #90

Variable Name:	cnt_kdam
Definition:	number of preliminary hearings
Measurement Unit:	Interval

Variables #91

Variable Name:	date_first_kdam
Definition:	date of the first preliminary hearing
Measurement Unit:	Date

Variables #92-94

Variable Name:	p_1_attend first kdam, p_2_attend first kdam, p_3_attend first kdam
Definition:	attendance of plaintiffs 1-3 and their lawyers at the first preliminary hearing
Measurement Unit:	Nominal

Valid Values	*Numeric code*	*Value label*
	1	The plaintiff and his lawyer attended
	2	The plaintiff's lawyer attended. The plaintiff did not attend and was not instructed to attend (this is usually the default, unless instructed otherwise by the judge or unless a preliminary hearing in fast track cases)
	3	The plaintiff's lawyer attended. The plaintiff did not attend although he was instructed to attend
	4	The plaintiff and his lawyer did not attend

Variables #95-97

Variable Name:	d_1_attend first kdam, d_2_attend first kdam, d_3_attend first kdam
Definition:	attendance of defendants 1-3 and their lawyers at the first preliminary hearing
Measurement Unit:	Nominal

Valid Values	*Numeric code*	*Value label*
	1	The defendant and his lawyer attended
	2	The defendant's lawyer attended. The defendant did not attend and was not instructed to attend
	3	The defendant's lawyer attended. The defendant did not attend although he was instructed to
	4	The defendant and his lawyer did not attend

Variables #98

Variable Name:	comments_kdam
Measurement Unit:	String

Variable #99

Variable Name:	cnt_rashi
Definition:	number of main hearings (trial hearings)
Measurement Unit:	Interval

Variables #100

Variable Name:	date_first_rashi

Definition:	date of the first main hearing
Measurement Unit:	Date

Variables #101-103

Variable Name:	p_1_attend_first_rashi, p_2_attend_first_rashi, p_3_attend _first_rashi
Definition:	attendance of plaintiffs 1-3 and their lawyers at the first main hearing
Measurement Unit:	Nominal
Valid Values	*Numeric code* — *Value label* 1 — The plaintiff and his lawyer attended 2 — The plaintiff's lawyer attended. The plaintiff did not attend and was not instructed to attend 3 — The plaintiff's lawyer attended. The plaintiff did not attend although he was instructed to 4 — The plaintiff and his lawyer did not attend

Variables #104-106

Variable Name:	d_1_attend first rashi, d_2_attend first rashi, d_3_attend first rashi
Definition:	attendance of defendants 1-3 and their lawyers at the first main hearing
Measurement Unit:	Nominal
Valid Values	*Numeric code* — *Value label* 1 — The defendant and his lawyer attended 2 — The defendant's lawyer attended. The defendant did not attend and was not instructed to attend 3 — The defendant's lawyer attended. The defendant did not attend although he was instructed to 4 — The defendant and his lawyer did not attend

Variables #107

Variable Name:	comments_first_rashi
Measurement Unit:	String

Variables #108

Variable Name:	date_last_rashi
Definition:	date of the last main hearing
Measurement Unit:	Date

Variables #109-111

Variable Name:	p_1_attend_last_rashi, p_2_attend_ last _rashi, p_3_attend _ last _rashi
Definition:	attendance of plaintiffs 1-3 and their lawyers at the last main hearing
Measurement Unit:	Nominal
Valid Values	*Numeric code* — *Value label* 1 — The plaintiff and his lawyer attended 2 — The plaintiff's lawyer attended. The plaintiff did not attend and was not instructed to attend 3 — The plaintiff's lawyer attended. The plaintiff did not attend although he was instructed to 4 — The plaintiff and his lawyer did not attend

Variables #112-114

Variable Name:	d_1_attend last rashi, d_2_attend last rashi, d_3_attend last rashi
Definition:	attendance of defendants 1-3 and last lawyers at the first main hearing
Measurement Unit:	Nominal
Valid Values	*Numeric code* — *Value label* 1 — The defendant and his lawyer attended 2 — The defendant's lawyer attended. The defendant did not attend and was not instructed to attend 3 — The defendant's lawyer attended. The defendant did not attend although he was instructed to 4 — The defendant and his lawyer did not attend

Variables #115

Variable Name:	comments_last_rashi
Measurement Unit:	String

Variable #116

Variable Name:	on_cnt_hrngs
Definition:	total number of hearings that took place during the proceedings
Measurement Unit:	Interval

Variable #117

Variable Name:	on_cnt_hrngs_mechdal
Definition:	out of the total number of hearings - the number of hearings that were cancelled or postponed after they began due to an omission by the parties (for example due to nonattendance or to non-submission of required documents)
Measurement Unit:	Interval

Variable #118

Variable Name:	on_cnt_hrngs_pshara
Definition:	out of the total number of hearings - the number of hearings in which the primary occurrence was a settlement agreement which was brought to the signature of the judge (distinct from hearings in which the settlement was reached during the hearing, with the assistance of the judge)
Measurement Unit:	Interval

Variable #119

Variable Name:	off_cnt_hrngs
Definition:	number of hearings that did not occur due to cancellations or postponements before the hearing began
Measurement Unit:	Interval

Variable #120

Variable Name:	off_cnt_hrngs_sides
Definition:	number of hearings that were cancelled or postponed before the hearing began for reasons involving the litigant (usually following a written request by the litigants)
Measurement Unit:	Interval

Variables #121

Variable Name:	comments_hearings
Measurement Unit:	String

SUMMATION VARIABLES

Variables #122

Variable Name:	sikumim
Definition:	Were summations submitted by the litigants?
Measurement Unit:	Nominal
Valid Values	*Numeric code* — *Value label* 1 — oral summations 2 — written summations 3 — no summations

Variable #123

Variable Name:	sikumim_pages_plntf
Definition:	if the summations were filed in writing by the plaintiffs – the number of pages
Measurement Unit:	Interval

Variable #124

Variable Name:	sikumim_pages_dfn
Definition:	if the summations were filed in writing by the defendants – the number of pages
Measurement Unit:	Interval

Variables #125

Variable Name:	comments_ sikumim
Measurement Unit:	String

LAWYER AGREEMENT VARIABLES

Variables #126

Variable Name:	lawyer_agreement
Definition:	Was the fee agreement between lawyer and client submitted to the court?
Measurement Unit:	Nominal
Valid Values	*Numeric code* — *Value label* 1 — the plaintiffs submitted the fee agreement 2 — the defendants submitted the fee agreement 3 — the plaintiffs and the defendants submitted the fee agreement 4 — no fee agreement was submitted

Variables #127

Variable Name:	comments_lawyer_agreement
Measurement Unit:	String

DEPOSITIONS AND TESTIMONIES VARIABLES

Variable #128

Variable Name:	cnt_p_depos
Definition:	number of depositions by the plaintiffs
Measurement Unit:	Interval

Variable #129

Variable Name:	cnt_p_testimony
Definition:	number of plaintiffs who testified
Measurement Unit:	Interval

Variable #130

Variable Name:	cnt_p_ed_depos
Definition:	number of depositions by witnesses on behalf of the plaintiffs

Measurement Unit:	Interval

Variable #131

Variable Name:	cnt_p_testimony
Definition:	number of witnesses on behalf of the plaintiffs who testified
Measurement Unit:	Interval

Variable #132

Variable Name:	cnt_p_mumhe_depos
Definition:	number of expert depositions on behalf of the plaintiffs
Measurement Unit:	Interval

Variable #133

Variable Name:	cnt_p_mumhe_testimonies
Definition:	number of experts on behalf of the plaintiffs who testified
Measurement Unit:	Interval

Variables #134

Variable Name:	comments_p_edim
Measurement Unit:	String

Variable #135

Variable Name:	cnt_d_depos
Definition:	number of depositions by the defendants
Measurement Unit:	Interval

Variable #136

Variable Name:	cnt_d_testimony
Definition:	number of defendants who testified
Measurement Unit:	Interval

Variable #137

Variable Name:	cnt_d_ed_depos
Definition:	number of depositions by witnesses on behalf of the defendants
Measurement Unit:	Interval

Variable #138

Variable Name:	cnt_d_ed_testimony
Definition:	number of witnesses on behalf of the defendants who testified
Measurement Unit:	Interval

Variable #139

Variable Name:	cnt_d_mumhe_depos
Definition:	number of expert depositions on behalf of the defendants
Measurement Unit:	Interval

Variable #140

Variable Name:	cnt_d_mumhe_testimonies
Definition:	number of experts on behalf of the defendants who testified
Measurement Unit:	Interval

Variables #141

Variable Name:	comments_d_edim
Measurement Unit:	String

Variable #142

Variable Name:	cnt_court_mumhe
Definition:	number of experts appointed by the court
Measurement Unit:	Interval

Variables #143

Variable Name:	costs_court_mumhe
Definition:	DId the court order one of the sides to bear the costs of the court-appointed expert?
Measurement Unit:	Nominal
Valid Values	*Numeric code* — *Value label* 1 — the court ordered the plaintiffs to bear the expert's costs 2 — the court ordered the defendants to bear the expert's costs 3 — the court ordered the plaintiffs and defendants to bear the expert's costs 4 — the court did not order the parties to bear the expert's costs

Variables #144

Variable Name:	comments_court_mumhe
Measurement Unit:	String

TEMPORARY INJUNCTIONS VARIABLES

Variable #145

Variable Name:	cnt_zmani
Definition:	number of temporary injunctions requested by the parties during the proceedings
Measurement Unit:	Interval

Variables #146-148

Variable Name:	type_p_1_zmani, type_p_2_zmani, type_p_3_zmani
Definition:	the type of temporary injunctions requested by plaintiffs 1-3
Measurement Unit:	Nominal
Valid Values	*Numeric code* — *Value label* 1 — restraining order 2 — confiscation order 3 — third party confiscation order 4 — stay of exit order

	5	restriction of use of property
	6	seizure of property
	7	receivership
	8	entering and searching
	9	claim prevention
	10	other

Variables #149-151

Variable Name:	received_p_1_zmani, received _p_2_zmani, received _p_3_zmani	
Definition:	the type of temporary injunctions granted to plaintiffs 1-3	
Measurement Unit:	Nominal	
Valid Values	*Numeric code*	*Value label*
	1	the requested order was granted
	2	the requested order was partially granted
	3	the requested order was denied

Variables #152-154

Variable Name:	type_d_1_zmani, type_d_2_zmani, type_pd3_zmani	
Definition:	the type of temporary injunctions requested by defendants 1-3	
Measurement Unit:	Nominal	
Valid Values	*Numeric code*	*Value label*
	1	restraining order
	2	confiscation order
	3	third party confiscation order
	4	stay of exit order
	5	restriction of use of property
	6	seizure of property
	7	receivership
	8	entering and searching
	9	claim prevention
	10	other

Variables #155-157

Variable Name:	received_d_1_zmani, received _d_2_zmani, received _d_3_zmani
Definition:	the type of temporary injunctions granted to defendants 1-3
Measurement Unit:	Nominal

Valid Values	*Numeric code*	*Value label*
	1	the requested order was granted
	2	the requested order was partially granted
	3	the requested order was denied

Variables #158

Variable Name:	comments_zmani
Measurement Unit:	String

RELIEF REQUESTED VARIABLES

Variable #159

Variable Name:	sum_claim
Definition:	total amount requested in the claim (excluding court costs, if requested)
Measurement Unit:	Interval

Variables #160-162

Variable Name:	type_p_1_seadim, type_p_2_seadim, type_p_3_seadim	
Definition:	the type of reliefs requested by plaintiffs 1-3	
Measurement Unit:	Nominal	
Valid Values	*Numeric code*	*Value label*
	1	monetary
	2	injunctive
	3	declaratory
	4	monetary + injunctive
	5	monetary + declaratory
	6	injunctive + declaratory
	7	monetary + injunctive + declaratory
	8	unspecified monetary relief

Variable #163-165

Variable Name:	sum_p_1_seadim, sum_p_2_seadim, sum_p_3_seadim

Definition:	if the claim requested by the plaintiffs was monetary - the sum of the claim (if the sum was specified generally for all plaintiffs - the total sum divided by the number of plaintiffs)
Measurement Unit:	Interval

Variables #166

Variable Name:	type_shekeneged_seadim
Definition:	the type of relief requested in the counterclaim
Measurement Unit:	Nominal
Valid Values	*Numeric code* — *Value label* 1 — monetary 2 — injunctive 3 — declaratory 4 — monetary + injunctive 5 — monetary + declaratory 6 — injunctive + declaratory 7 — monetary + injunctive + declaratory 8 — unspecified monetary relief

Variable #167

Variable Name:	sum_shekeneged_seadim
Definition:	amount requested in the counterclaim
Measurement Unit:	Interval

Variables #168

Variable Name:	comments_req_seadim
Measurement Unit:	String

RELIEF GRANTED VARIABLES

Variable #169-171

Variable Name:	sum_received_p_1_seadim, sum_received_p_2_seadim, sum_received_p_3_seadim
Definition:	monetary relief granted to plaintiffs 1-3

Measurement Unit:	Nominal

Variable #172

Variable Name:	sum_claim_received
Definition:	total monetary relief granted to plaintiffs 1-3
Measurement Unit:	Interval

Variable #173

Variable Name:	sum_received_shekenged_seadim
Definition:	monetary relief granted to counter-plaintiff
Measurement Unit:	Interval

Variables #174

Variable Name:	comments_seadim
Measurement Unit:	String

CONTEMPT OF COURT VARIABLES

Variables #175

Variable Name:	contempt
Definition:	Was a contempt of court order issued?
Measurement Unit:	Nominal
Valid Values	*Numeric code* — *Value label* 0 — a contempt of court order was issued 1 — no contempt of court order was issued

Variables #176

Variable Name:	comments_contempt
Measurement Unit:	String

COSTS VARIABLES

Variables #177

Variable Name:	agreement_costs
Definition:	If the parties reached an agreement that was approved by the court, did they include an agreement regarding allocation of court costs?
Measurement Unit:	Nominal
Valid Values	*Numeric code* — *Value label* 0 — the parties referred to the costs issue in the agreement between them, and decided to allocate costs (either specifically or as part of the total settlement sum decided upon) 1 — the parties referred to the costs issue in the agreement between them, and decided not to allocate costs 2 — the parties did not refer to the costs issue in the agreement between them

Variables #178

Variable Name:	comments_agreement_costs
Measurement Unit:	String

Variables #179-181

Variable Name:	req_costs_p_1, req_costs_p_2, req_costs_p_3
Definition:	Did plaintiffs 1-3 request costs, and if so - how? (the most recent such request made by the plaintiff, either orally or in a written motion)
Measurement Unit:	Nominal
Valid Values	*Numeric code* — *Value label* 1 — the plaintiff requested costs and specified a sum 2 — the plaintiff or all the plaintiffs together requested costs without specifying a sum or an alternative way in which to calculate the costs 3 — the plaintiff requested costs as a percentage of the claim 4 — all the plaintiffs together requested costs and specified a combined amount 5 — all the plaintiffs together requested costs as a percentage of the claim 6 — the plaintiff did not request costs

	7	the plaintiff requested costs and then explicitly withdrawed the request (usually when a settlement was reached)

Variable #182-184

Variable Name:	sum_req_costs_p_1, sum_req_costs_p_2, sum_req_costs_p_3
Definition:	the sum of court costs requested by plaintiffs 1-3
Measurement Unit:	Interval

Variables #185

Variable Name:	comments_req_costs
Measurement Unit:	String

Variables #186-188

Variable Name:	costs_p_1, costs_p_2, costs_p_3	
Definition:	Were costs granted to plaintiffs 1-3?	
Measurement Unit:	Nominal	
Valid Values	*Numeric code*	*Value label*
	1	the plaintiff was granted costs and an amount was specified
	2	the plaintiff or all the plaintiffs together were granted costs without specifying an amount
	3	the plaintiff was granted costs as a percentage of the claim
	4	all the plaintiffs together were granted costs and a combined amount was specified
	5	all the plaintiffs together were granted costs as a percentage of the claim
	6	the plaintiff was not granted costs
	7	the parties reached an agreement between them and the court did not grant costs in addition to what was decided upon in the agreement
	8	the plaintiff was granted costs as requested (usually in default judgments, in cases where the judges approves all of the plaintiff's requests)
	9	the plaintiff was granted costs without specifying an amount, and the costs were included as part of the monetary relief granted

Variable #189-191

Variable Name:	sum_costs_p_1, sum_costs_p_2, sum_costs_p_3
Definition:	the sum of court costs granted to plaintiffs 1-3
Measurement Unit:	Interval

Variable #192

Variable Name:	all_costs_p
Definition:	total sum of costs granted to the plaintiffs
Measurement Unit:	Interval

Variables #193

Variable Name:	comments_p_costs
Measurement Unit:	String

Variables #194-196

Variable Name:	costs_d_1, costs_d_2, costs_d_3
Definition:	Were costs granted to defendants 1-3?
Measurement Unit:	Interval

Valid Values

Numeric code	*Value label*
1	the defendant was granted costs and an amount was specified
2	the defendant or all the defendants together were granted costs without specifying an amount
3	the defendant was granted costs as a percentage of the claim
4	all the defendants together were granted costs and a combined amount was specified
5	all the defendants together were granted costs as a percentage of the claim
6	the defendant was not granted costs
7	the parties reached an agreement between them and the court did not grant costs in addition to what was decided upon in the agreement

	9	the defendant was granted costs without specifying an amount, and the costs were included as part of the monetary relief granted

Variable #197-199

Variable Name:	sum_costs_d_1, sum_costs_d_2, sum_costs_d_3
Definition:	the sum of court costs granted to defendants 1-3
Measurement Unit:	Interval

Variable #200

Variable Name:	all_costs_d
Definition:	total sum of costs granted to the defendants
Measurement Unit:	Interval

Variables #201

Variable Name:	comments_d_costs
Measurement Unit:	String

Variables #202

Variable Name:	cost_thrd_party	
Definition:	Were costs granted to third parties?	
Measurement Unit:	Nominal	
Valid Values	*Numeric code*	*Value label*
	1	the third party was granted costs and an amount was specified
	2	the third party was granted costs without specifying an amount
	3	the third party was granted costs as a percentage of the claim
	4	the third party was not granted costs

Variable #203

Variable Name:	sum_costs_thrd

Definition:	the sum of costs granted to third parties
Measurement Unit:	Interval

Variables #204

Variable Name:	costs_by_thrd
Definition:	Were third parties ordered to pay costs?
Measurement Unit:	Nominal
Valid Values	*Numeric code* — *Value label* 1 — the third party was ordered to pay costs in favor of the plaintiffs 2 — the third party was ordered to pay costs in favor of the defendants 3 — the third party was not ordered to pay costs

Variable #205

Variable Name:	sum_costs_by_thrd
Definition:	the amount of costs third parties were ordered to pay
Measurement Unit:	Interval

Variables #206

Variable Name:	comments_costs_third
Measurement Unit:	String

Variables #207

Variable Name:	costs_state
Definition:	Were the litigants ordered to pay costs to the state? (excluding cases in which the state was a party to the proceedings)
Measurement Unit:	Nominal
Valid Values	*Numeric code* — *Value label* 1 — the plaintiffs were ordered to pay costs to the state 2 — the defendants were ordered to pay costs to the state

	3	the plaintiffs and defendants were ordered to pay costs to the state
	4	the litigants were not ordered to pay costs to the state

Variables #208

Variable Name:	court_costs	
Definition:	general details of costs which were granted or denied	
Measurement Unit:	Nominal	
Valid Values	*Numeric code*	*Value label*
	1	costs were granted by the judge
	2	costs were granted by a registrar
	3	costs were not granted; the judge did not mention costs in his decision
	4	costs were not granted; this was explicitly mentioned by the judge in his decision
	7	the parties reached an agreement between them and the court did not grant costs in addition to what was decided upon in the agreement
	8	the judge granted costs as requested (usually in default judgments, in cases where the judges approves all of the plaintiff's requests)
	9	the judge granted costs without specifying an amount, and the costs were included as part of the monetary relief granted

Variables #209

Variable Name:	costs_type	
Definition:	If costs were granted, was a categorization of these sums specified? (for example, attorney fees, witnesses or fees - next variables are relevant if such a categorization was made by the judge)	
Measurement Unit:	Nominal	
Valid Values	*Numeric code*	*Value label*
	1	a categorization of the granted costs was specified
	2	no categorization of the granted costs was specified

Variable #210

Variable Name:	sum_lawyer_fees
Definition:	the amount of costs allocated to attorney fees
Measurement Unit:	Interval

Variable #211

Variable Name:	sum_edim
Definition:	the amount of costs allocated to witness payments
Measurement Unit:	Interval

Variable #212

Variable Name:	sum_mumhim
Definition:	the amount of costs allocated to expert payments
Measurement Unit:	Interval

Variable #213

Variable Name:	sum_onshi
Definition:	the amount of costs allocated as a sanction
Measurement Unit:	Interval

Variable #214

Variable Name:	sum_other
Definition:	the amount of costs allocated for other purposes
Measurement Unit:	Interval

Variables #215

Variable Name:	agrot_refund
Definition:	Did the court order the defendant to pay the plaintiffs the sum of the filing fees?
Measurement Unit:	Nominal
	Numeric code *Value label*

Valid Values	1	yes, the judge ordered the defendant to pay the plaintiffs the sum of the filing fees
	2	no, the judge did not order the defendant to pay the plaintiffs the sum of the filing fees

Variables #216

Variable Name:	court_costs_explanation
Definition:	Did the judge refer to his considerations in granting or denying costs?
Measurement Unit:	Nominal

	Numeric code	*Value label*
Valid Values	0	yes, the judge referred to his considerations in granting or denying costs
	1	no, the judge did not refer to his considerations in granting or denying costs

Variables #217

Variable Name:	comments_costs_explanation
Measurement Unit:	String

Variable #218

Variable Name:	perc_costs_from_winning
Definition:	the percent of costs granted out of the relief
Measurement Unit:	Interval

Variable #219

Variable Name:	perc_costs_from_claim
Definition:	the percent of costs granted out of the sum of the claim
Measurement Unit:	Interval

Variable #220

Variable Name:	perc_winning_from_claim
Definition:	the percent of the relief from the sum of the claim

Measurement Unit:	Interval

Variables #221

Variable Name:	costs_interim	
Definition:	Were costs granted during the proceedings?	
Measurement Unit:	Nominal	
Valid Values	*Numeric code*	*Value label*
	0	no costs were granted during the proceedings
	1	yes, costs were granted during the proceedings