
Note

**Attitude, Evaluation, and Decision-
Making by Civil Litigants
and Their Lawyers**

Findings from the Nationwide Surveys

(part 2 of 2)

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Gender Analysis of the Nationwide Civil Case File Research (2005)

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Abstract

This paper tries to analyze the Japanese use of court from a gender perspective. For this purpose, the data collected in the Nationwide Civil Case File Research (2005) is used contrasting male and female cases. Some findings of the analysis are: (1) males use the court as plaintiffs twice as often as females, and appear in the court as defendants three times as often as females; (2) although the types of lawsuits and the amount of damages claimed are similar, one type of case, the suit for adultery, is brought only by female plaintiffs; (3) female cases tend to end in in-court settlement more often than male cases; (4) female plaintiffs tend to be represented by one lawyer instead of many, meaning a larger law firm. These findings suggest that male and female behavior becomes similar on the structural level where the lawyers' decisions play a large part involved with legal cultural factors, such as what kind of claim is considered suitable to litigate and what size damage award it is appropriate to claim. But some peculiarities to the female litigant are found, suggesting that gender statistics and further gender analysis of female access to the courts should be conducted.

Key words: civil justice, gender, plaintiff, defendant, legal representation

1. Introduction

This paper argues that a gender perspective on civil justice, including the gender statistics of the civil docket, is necessary to improve women's use of courts and thereby improve their status in society in Japan. The argument is grounded on a set of statistical data derived from the Nationwide Civil Case File Research, undertaken in 2005 by the Civil Litigation Behavior Research Group, Group C of the Nationwide Survey on Civil Disputes (Japan) research project, "Dispute Resolution and Civil Justice in a Legalizing Society." The data was compiled from the court files for 1132 randomly selected civil cases, from courts throughout Japan. The current absence of gender consciousness in civil proceedings, as well as in the Japanese legal system in general, could induce women not only to use civil lawsuits less often than men to solve their problems but also to feel estranged from the law and justice.

The Supreme Court of Japan, as in most other countries, does not take into account the gender of plaintiffs and defendants in civil cases, in contrast to the criminal justice system where gender of defendants seems inevitably salient for purposes of sentencing and rehabilitation. Gender is presumed irrelevant in civil proceedings, because all citizens are treated as equal under the law. Some findings in our survey suggest that this presumption could be mistaken and that gender should be taken into consideration in both civil and criminal proceedings.

The reason that civil proceedings do not take gender into consideration derives from the most fundamental principle of the modern civil justice system, where the initiative for major actions such as filing lawsuits, presenting evidence, and concluding the lawsuit by accepting an in-court settlement or withdrawing the claim or counterclaim belong to the citizen-litigant, not the courts. The parties in civil proceedings are presumed equal in these actions, as the general concept "citizen" is applied to everyone regardless of gender in the modern

civil justice system.

However, as feminist legal theorists have argued, the law and the legal system are historically and philosophically male. In every country, until very recently, women were not allowed to vote and were not considered to be legal subjects. Even after enfranchisement and the recognition of women's legal personality, women remain distanced from law for a variety of complex reasons.

This is particularly true in Japan, where the enfranchisement of women was as late as 1945 and the legal culture is still homosocially masculine. The Gender Equality Law, the basic legislation designed to overcome social and factual gender inequality, was not enacted until 1999. Besides the societal inequality regarding housework and care work for children, the sick and the elderly, and the gender-unequal distributions of power in public life, Japanese women are also not yet equipped to use law on their own behalf.

In this context, it is important to examine whether women in Japan enjoy the privilege presumed to be given to all citizens to use the courts to solve disputes in social life. To further this goal, this paper analyzes court records using gender as an independent variable.

2. Litigants in the 2004 Court Record

The court records from the 51 district courts throughout Japan establish that women are currently less involved in civil suits than men are. Table 1 and Table 2 present gendered data on litigants, plaintiffs and defendants, respectively. For analytical purposes, all the litigants in our sample court cases are divided into four categories: male, female, joint, and corporate. Litigants were categorized as male or female based on their first names. As in any culture, there are certain customary rules for naming a baby according to its sex. For example, the suffix of "-ko" is used to show the baby is a girl, compared with the suffix "-o" for a boy. Other gendered suffixes include "-taro" for the first-born boy and "-mi",

Table 1 Category of Litigants 1: Plaintiff

	case	%	Effective %
Male	362	32.0	32.1
Female	184	16.3	16.3
Joint	77	6.8	6.8
Corporate	504	44.6	44.7
Total	1127	99.6	100.0
Omitted Unknown	4	0.4	
Total	1131	100.0	

Table 2 Category of Litigants 1: Defendant

	case	%	Effective %
Male	576	50.9	51.3
Female	156	13.8	13.9
Joint	154	13.6	13.7
Corporate	236	20.9	21.0
Total	1122	99.2	100.0
Omitted Unknown	9	0.8	
Total	1131	100.0	

meaning beauty, for a girl. Aside from these gender suffixes, there are typical names for boys, such as "Masayuki", "Seigo", and "Kahei", and for girls "Misato" and "Hana". These customs persist in Japan, even if recently there has been a loosening and increase in non-traditional and gender-neutral names. This method could not identify as male or female four of the individual plaintiffs and twelve of the individual defendants in this data. Individual litigants whose gender could not be identified from their first names are categorized as "unknown" and eliminated from the analysis after this.

Women involved in the lawsuits as joint litigants with their husbands or other men are assigned into a distinct category, "Joint", and excluded from the category "Female," because their decision-making, legal as well as in any other sense, cannot be differentiated from that of the male partner (s). Joint cases amount to 77 and 6.8% of the total. In the case of joint litigants, the cases are

categorized as male or female if all the joint litigants are the same gender. Otherwise they are categorized as "joint" since we cannot differentiate their decision-making from that of their partners.

In our sample, individuals (male, female and joint combined) use the courts slightly more than the corporations: 623 and 504 respectively. But the actual number of corporate plaintiffs is 29 more, because the male category includes 26 cases with corporate participants owned by males and the female category includes 3 cases with corporate participants owned by females.

As Tables 1 and 2 show, male litigants outnumber female litigants 2:1 as plaintiffs and 3:1 as defendants. Females were plaintiffs in 184 cases compared to 362 cases with male plaintiffs, and as defendants 156 cases involved females and 576 involved males in the district courts in the year of 2004.

The group most frequently initiating lawsuits is corporations, with 44.5% of all cases in the sample brought by corporate plaintiffs. In contrast, male individuals are the group most likely to be sued, i.e., 50.9%.

Table 3 is the cross tabulation of plaintiff and defendant. The most frequent pattern of civil litigation is that of corporate plaintiff against male defendant (s). Corporate plaintiff sued corporate defendant in only 2 cases in our sample¹.

Table 3 Cross Tabulation of Litigants

Plaintiff	Defendant					Total
	Male	Female	Joint	Corporate	Total	
Male	140	31	37	152	360	
%	12.5	2.8	3.3	13.6	32.2	
Female	70	43	21	50	184	
%	6.3	3.8	1.9	4.5	16.4	
Joint	28	8	9	32	77	
%	2.5	0.7	0.8	2.9	6.9	
Corporate	335	74	87	2	498	
%	29.9	6.6	7.8	0.2	44.5	
Total	573	156	154	236	1119	
%	51.2	13.9	13.8	21.1	100.0	

Males sued males in 140 cases, 12.5% of the total. The least frequent pattern is male plaintiffs suing female defendants; 31 cases and 2.8% of the total. Females sued males in 70 cases, which comprise 6.3% of all litigation. Cases where both parties are females are minimal: 43 or 3.8% of the total.

Except as joint plaintiffs, 6.9% of the total, our data show that female appearance in the court is limited, 16.4% of the plaintiffs and 13.9% of the defendants.

3. Gender Difference among Plaintiffs

This section looks more closely at the gender of plaintiffs from various angles. Male data is compared with female data to see if there is any gender difference in the use of civil court in terms of number of defendants, types of cases, amounts of claim, and the result.

(1) Number of Defendants Named in Suit

The individual plaintiff sued a single individual defendant in 249 cases, two defendants in 57 cases, and three or more defendants in 38 cases. Strikingly, female plaintiffs sued a single defendant in far more cases than male plaintiffs, 58.2% as compared to 39.2%. Female plaintiffs also sued corporate defendants far less frequently than male plaintiffs, 27.2% as compared to 42%. (Table 4)

Table 4 Cross Table of Gender of Plaintiff and Number of Defendants

	Individual			Corporate	Total
	1	2	3 or more		
Male	142	41	27	152	362
%	39.2	11.3	7.5	42.0	100.0
Female	107	16	11	50	184
%	58.2	8.7	6.0	27.2	100.0
Total	249	57	38	202	546
%	45.6	10.4	7.0	37.0	100.0

(2) The Type of Plaintiff's Cases

We categorized the type of the case into 21 types according to the substance of the case, adding seven categories to the original 15 categories made by the court clerk when the case were brought to the court². Table 5 shows the case numbers in each type by gender.

The ranking of frequency by types of cases is shown in the following table 6. There are some differences of frequency in the type of claim by gender.

The most frequent type of the litigation for both male and female plaintiffs is "torts excluding traffic accidents". However, there is a significant gender difference, with these making up 17.1% of the cases brought by males and 22.8% of the

Table 5 Type of the case

Type of case	Male	Female	Total
Loan-related	40	18	58
Surety-related	4	2	6
Purchase money-related	5	3	8
Credit-related [incl. credit card-related claims]	5	3	8
Contract-related damages	19	9	28
Subcontract-related	11	2	13
Traffic accidents	34	22	56
Torts (excl. traffic accidents)	62	42	104
Rent-related	9	4	13
Ownership of land or building	5	2	7
Eviction from land or building	53	23	76
Real property title registration-related	25	13	38
Divorce-related	1	2	3
Inheritance-related	8	10	18
Other	52	23	75
Unjust enrichment (incl. overpayment of interest on consumer loans)	35	13	48
Deposit	6	3	9
Confirmation of non-existence of obligation	19	6	25
Labor	16	4	20
Promissory note	4	1	5
Determination of boundary	2	0	2

Table 6 Ranking and Rate of Types of Cases

Ranking	Male Type of Cases	% of 362cases	Female Type of Cases	% of 184cases
1	Torts (excl. traffic accidents)	17.1	Torts (excl. traffic accidents)	22.8
2	Eviction from land or building	14.6	Eviction from land or building	12.5
			Other	12.5
3	Other	14.4	Traffic accidents	12.0
4	Loan-related	11.1	Loan-related	9.8
5	Unjust enrichment (incl. overpayment)	9.7	Unjust enrichment (incl. overpayment)	7.1
			Real property title (registration-related)	7.1
6	Traffic accidents	9.4		

cases brought by females.

A reason for this prominence of torts brought by female plaintiffs appears quite gender specific. At least 14 cases brought by female plaintiffs are tort claims against the woman with whom the plaintiff's husband committed adultery. Only one case was brought by a male plaintiff against his wife's adultery partner³. The adultery cases push the female rate of torts 5.7 points higher than the male rate.

The second most frequent claim for both male and female plaintiffs is "eviction from land or building", but "other" is in the same rank with "eviction from land or building" for female plaintiffs. Miscellaneous claims are found in this "other" category, even after our data-cleaning and reclassification. The "other" category is in the third rank for male plaintiffs, but the rate is higher than for female plaintiffs.

The traffic accident ranks third for female plaintiff, but this category ranks sixth for male with 3.1 points difference. The fourth frequent claim is "loan-related" for both male and female but male is 2.1 points higher. The fifth rank is "unjust enrichment, including overpayment", for both male and female. Again the male rate is 2.6 points higher than female. For female plaintiffs, "real

property title, registration-related", is in the same rate and rank with the "un-just enrichment". The male rank of "real property title, registration-related" does not show on this ranking list but the rate is almost the same (approximately 7%) with female. (See Table 6)

Thus, the type of claim is not gender specific, except adultery cases in the "torts" category. Here the structural factors of civil justice seem more salient than gender. The decision of what kind of claim is to be brought to the court and also what kind of claim is possible to win through litigation is framed by precedents and behaviors of the court. Since most of the plaintiffs are represented by counsel (Table 11), legal and technical information and advice from the lawyers would have affected the plaintiffs' use of the court.

(3) Amount in Dispute by Plaintiff's Gender

A similar framing seems to occur regarding the amount in dispute. Not much

Table 7 Amount in Dispute (¥)

	Male	Female	Total
0	2	2	4
%	0.6	1.1	0.7
~ 500,000	30	17	47
%	8.3	9.2	8.6
~ 1million	36	15	51
%	9.9	8.2	9.3
~ 5million	165	86	251
%	45.6	46.7	46
~ 10million	50	22	72
%	13.8	12	13.2
~ 50million	62	33	95
%	17.1	17.9	17.4
~ 100million	12	6	18
%	3.3	3.3	3.3
More	5	3	8
%	1.4	1.6	1.5
Total	362	184	546
%	100.0	100.0	100.0

difference is found between male and female cases (Table 7).

The most frequent range of amount is between 1 million and 5 million yen for both male and female plaintiffs. The largest amount is 1,590,688,000 yen for a male, and 500,000,000 yen for a female.

(4) Results in the First Instance

In-court settlement is the most likely result in civil litigation in Japan. In our sample, almost two fifth of all cases ended with in-court settlements. But the percentage is 4.9 points higher for female than male litigants.

Male plaintiffs withdraw more than female: 17.4% and 14.7% respectively. Cases brought by males are more often dismissed on the merits with prejudice than those brought by females: 12.5% and 5.4%. At the same time, cases brought by females are partially affirmed by the court more than those brought by

Table 8 Results in the First Instance: Plaintiff

	Male	Female	Total
Affirmation of claim	63	29	92
%	17.4	15.8	16.8
Partial affirmation of claim	37	29	66
%	10.2	15.8	12.1
Dismissal with prejudice on the merits	46	10	56
%	12.7	5.4	10.2
Withdrawal	63	27	90
%	17.4	14.7	16.5
Acknowledgment	5	3	8
%	1.4	1.6	1.5
In-court settlement	133	82	215
%	36.7	44.6	39.4
Multiple results	7	1	8
%	1.9	0.5	1.5
Other	8	3	11
%	2.2	1.6	2.0
Total	362	184	546
%	100.0	100.0	100.0

males: 15.8% and 10.2%, though the affirmation rate is 1.6% less. It seems that women are more reluctant to sue or more careful in grounding their claim before they sue.

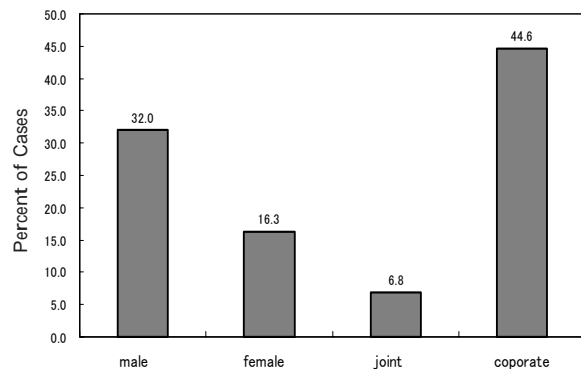
4. Plaintiffs and Gender

(1) Structure of litigating party

As Table 1 showed earlier, the percentage of female plaintiffs is half that of male plaintiffs. Graph 1 illustrates the percentage of each category of plaintiffs.

Here we have to pay attention to the limitations of our research. Our data does not include matrimonial cases, which females litigate far more often than males. Because of the shift of judicial jurisdiction over matrimonial cases⁴, we have chosen to exclude "divorce-related" and "inheritance-related" from our sample in our classification of the type of the cases listed in Table 5 and Table 14. The few cases of such types that appear in these tables are only the residue of old cases before the jurisdiction shift took place.

The category "Joint" is used for the cases that include both male and female litigants, as defined on p.5. The most frequent combination is husband and wife,



Graph 1 Categorized Plaintiff

Table 9 Number of individuals in the party

	1	2	3	4	5	Total
Male	329	19	6	6	2	362
%	90.9	5.2	1.7	1.7	0.6	100.0
Female	165	12	4	3	0	184
%	89.7	6.5	2.2	1.6	0.0	100.0
Total	494	31	10	9	2	546
%	90.5	5.7	1.8	1.6	0.4	100.0

Table 10 Number of Corporate Partners

	0	1	2	3 or more	Total
Male	336	20	5	1	362
%	92.8	5.5	1.4	0.3	100.0
Female	181	3	0	0	184
%	98.4	1.6	0.0	0.0	100.0
Total	517	23	5	1	546
%	94.7	4.2	0.9	0.2	100.0

but some joint cases involve more than two people whose relationship cannot be identified from the court record⁵.

Table 9 involves the number of individuals in the litigating party. Most of the plaintiffs litigate alone: 90.9% for males and 89.7% for females. The cases with two persons in the party make up 5.2% of the male cases and 6.5% of the female cases. The maximum number of individual in any party is five for male cases.

As mentioned earlier (p.7), some cases also have corporate partners: 7.2% of the male cases and only 1.6% of the female cases. (Table 10) The corporate partners that joined in female cases are female owned.

Therefore, if we take note that most of the corporate litigants are owned and represented by males, males use the court more than three quarters of the total.

(2) Representation

Individual plaintiffs retain lawyers more than corporate plaintiffs. Almost a quarter of the corporate cases are self-represented, likely relying on an attorney

Table 11 Number of Lawyers of Plaintiff

		Number of Lawyers				
		0	1	2	3/more	Total
Plaintiff	Male	69	163	76	54	362
	%	19.1%	45.0%	21.0%	14.9%	100.0%
	Female	23	104	31	26	184
	%	12.5%	56.5%	16.8%	14.1%	100.0%
	Joint	2	33	23	19	77
	%	2.6%	42.9%	29.9%	24.7%	100.0%
	Corporate	120	170	72	142	504
	%	23.8%	33.7%	14.3%	28.2%	100.0%
	Total	214	470	202	241	1127
	%	19.0%	41.7%	17.9%	21.4%	100.0%

from their legal department. The next highest rate of self-representation is found among male plaintiffs (19.1%). Only 12.5% of female plaintiffs were self-represented.

Two or more lawyers are involved in 130 male cases (35.9% of the male cases) and 57 female cases (30.9% of the female cases). The maximum number of lawyers found, in a male case is 13 and in a female case 10 lawyers. The relationship among these lawyers is not identifiable in the court record; possibilities include a listing of all members in the same firm nominally in some cases or the formation of a special legal team, either within or across the firms.

One lawyer is retained in 41.7% of the total. Female plaintiffs tend to be represented by one lawyer (56.5%) at the highest ratio of any category of plaintiff. The percentage is 11.5 points higher than male plaintiffs.

(3) Involvement of Female Lawyers

The court record shows that it is not likely that women retain female lawyers any more often than men do (Table 12). In 87.0% of the female cases and 85.4% of the male cases, no female lawyer was involved. Yasuhiro Wada describes in the article in this volume that women in general accept female lawyer more than

Table 12 Number of Female Lawyers by Plaintiff's Gender

		Number of Female Lawyers				
		.00	1.00	2.00	3.00	Total
Plaintiff	Male	309	39	8	6	362
	%	85.4%	10.8%	2.2%	1.7%	100.0%
	Female	160	20	4	0	184
	%	87.0%	10.9%	2.2%	.0%	100.0%
	Total	469	59	12	6	546
	%	85.9%	10.8%	2.2%	1.1%	100.0%

men do, but the majority of both women and men would prefer to retain male lawyers.

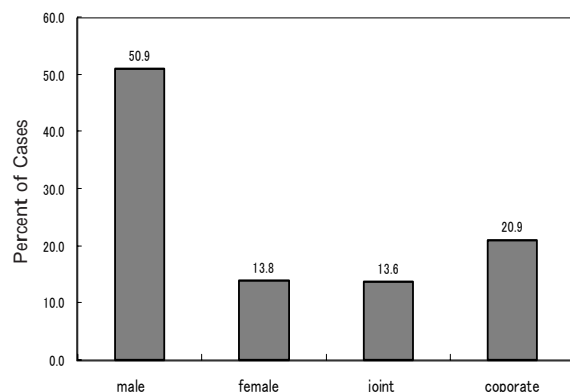
In this context two problems emerge as to the low rate of retaining female lawyers: (1) the access to female lawyers and (2) the people's confidence in a female lawyer's winning the case, given the male culture of justice and dominance in society.

Female lawyers in Japan number only a little more than 3000 in 2004, and they tend to be younger and to practice in the central part of Tokyo and other large cities. As in other countries, female attorneys are likely to be assigned by their firm or chosen by the client to represent matrimonial cases, which are excluded in our research as explained above. The second problem of people's confidence toward female lawyer's possibility of winning is another question to be studied in terms of both Japanese society in general and legal society in particular.

5. Female Defendants

(1) Rate of Female Defendant Cases

Women also appear in court as defendants. But women's possibility of being sued is minimal: 13.8% of the total litigation (Graph 2). This rate is even lower than their possibility of suing as plaintiffs as shown in Graph 1: 16% of the



Graph 2 Gender of Defendants

total. Compared to the number of male defendants, female defendants make up barely more than a quarter.

This phenomenon reminds us of the fact that women commit crime and become defendants in the criminal justice system less often than men. Women have fewer encounters with the law as law-violators. There could be various explanations: women have less opportunity to commit an antisocial act; women are more peace loving or adverse to conflicts; Women have a more obedient attitude toward law and other authority and so forth. Our findings would invite inquiry into the root causes of this tendency of women to be law-abiding.

(2) Defendant's Gender and Categories of Plaintiffs

Table 13 shows the categories of plaintiffs who brought suit against male and female defendants. Corporate plaintiffs use the court against individual defendants most: 58.5% of the male defendants and 47.4% of the female defendants were sued by corporate bodies.

The next most frequent type of litigation is against the same gender: 24.4% of the male defendants were sued by males; 27.6% of the female defendants were

Table 13 Defendant's Gender and Categories of Plaintiff

		Plaintiff				
		Male	Female	Joint	Corporate	Total
Defendant	Male	140	70	28	335	573
	%	24.4	12.2	4.9	58.5	100.0
	Female	31	43	8	74	156
	%	19.9	27.6	5.1	47.4	100.0
	Total	171	113	36	409	729
%	23.5	15.5	4.9	56.1	100.0	

sued by females. As noted earlier in p.9, 14 out of 43 female v. female cases are tort damage claims for adultery. Females were less likely to be sued than males by male plaintiffs: 19.9% and 24.4% respectively.

(3) Types of Cases

This section looks at types of defendant cases in terms of categorized claim. The most frequent type is "eviction from land or building" for both male and female defendant. As Mikio Kawai's article in the previous issue of Meijo Hogaku explains, the year of our sample cases include so many eviction cases because government-related urban development corporations brought many suits this year.

But rankings from second on are different between male and female. "Credit-related [incl. credit card-related claims]" is the second largest category of case for male defendants, but it is the fourth largest for female defendants. "Torts(excluding traffic accidents)" ranks second for female defendants for the reason stated above. "Traffic accidents" ranks third for female defendants, but it ranks fifth for male defendants. For female defendants, "Credit-related [incl. credit card-related claims]" ranks forth with "Other".

Table 14 Types of Defendant Cases by Gender

Types of the case	Male	Rank	Female	Rank
Loan-related	76	3	11	4
Surety-related	41		6	
Purchase money-related	14		5	
Credit-related [incl. credit card-related claims]	80	2	11	4
Contract-related damages	14		2	
Subcontract-related	10		1	
Traffic accidents	50	5	13	3
Torts (excl. traffic accidents)	67	4	27	2
Rent-related	26		4	
Ownership of land or building	6		2	
Eviction from land or building	181	1	49	1
Real property title registration-related	16		5	
Divorce-related	1		2	
Inheritance-related	6		10	
Other	48	6	11	4
Unjust enrichment (incl. overpayment of interest on consumer loans)	4		2	
Deposit	1		2	
Confirmation of non-existence of obligation	17		2	
Labor	4		1	
Promissory note	6		1	
Determination of boundary	3		2	

(4) Amount in Dispute in Defendant Cases

The amount in dispute is slightly different between cases against male defendants and those against female defendants, but it is not statistically significant. The cases against female defendants tend to be for smaller amounts: every amount-category over 5 million has a lower female than male percentage and the category " ~5 million" yen (from ¥1,000,001 to ¥5,000,000) includes 7.2 points more female cases than Male.

Table 15 Amount in dispute (¥)

	Male	Female	Total
0	4	0	4
%	0.7	0.0	0.5
~ 500,000	43	17	60
%	7.5	10.9	8.2
~ 1million	62	15	77
%	10.8	9.6	10.5
~ 5million	280	87	367
%	48.6	55.8	50.1
~ 10million	71	13	84
%	12.3	8.3	11.5
~ 50million	77	19	96
%	13.4	12.2	13.1
~ 100million	24	3	27
%	4.2	1.9	3.7
more	5	2	17
%	2.6	1.3	2.3
Total	76	156	732
%	100.0	100.0	100.0

(5) Representation of Defendants

Compared to males, female defendants retain lawyers at a higher rate, although self-representation is not uncommon. Self-representation by male defendants is almost 10 % more than by female defendants: 64.2% versus 54.5%. The other feature of female defendants is that they are more likely to be represented by just one lawyer instead of multiple lawyers, i.e., more than a quarter of the female cases.

It is found, if we compare Table 16 to Table 12, that the overall rate of lawyer representation in defendant cases is far lower than plaintiff cases. The reasons cannot be determined from this research alone but should be studied. They could include factors such as trial in absentia; repeat player; and corporate litigation as routine work, as well as the lack of legal and financial resources on the part of defendants.

Table 16 Number of Lawyers by Gender of Defendants

Defendant	Number of Lawyers				Total
	0	1	2	3/more	
Male	370	108	40	58	576
%	64.2%	18.8%	6.9%	10.1%	100.0%
Female	85	41	17	13	156
%	54.5%	26.3%	10.9%	8.3%	100.0%
Total	455	149	57	71	732
%	62.2%	20.4%	7.8%	9.7%	100.0%

Table 17 Number of Female Lawyers by Gender of Defendants

Defendant	Number of Lawyers				Total
	0	1	2	3/more	
Male	526	44	4	2	576
%	91.3%	7.6%	.7%	.3%	100.0%
Female	140	14	2	0	156
%	89.7%	9.0%	1.3%	.0%	100.0%
Total	666	58	6	2	732
%	91.0%	7.9%	.8%	.3%	100.0%

The rate at which defendants retain female lawyers (Table 17) is not much different from the rate at which plaintiffs did show in Table 13. The access to female lawyers and society's confidence in them seem again here to be the major problems.

5. Conclusion

In this paper, I tried to provide some evidence to support my argument that gender should be taken into consideration in the construction and operation of civil procedure, based on the findings of our research on court record. We should reexamine the presumption that since men and women are equals as citizens, they should be left alone to make their own decisions regarding the use of courts to solve social conflicts, and it is not necessary to make any empirical

examinations or more thorough investigation of systematic disparities in court use. Our research is one of such empirical examination, and more than that, based on the following findings it suggests the need for further gender conscious analysis.

Firstly, as to the rate of bringing a case to the court, the gender difference is marked: (1) Fewer women are involved in civil suits than men: approximately 1:2 for plaintiffs and 1:3 for defendants; (2) Females tend to sue a single individual instead of many; (3) Females sue a corporate body less often than males do; (4) The male use of courts is more than double of the number of the nominally individual cases, because in Japan most of the corporate bodies are owned and represented by males. Moreover, our research excluded matrimonial cases because of jurisdictional change of the court system in 2004. Thus, female use of the court as a whole is yet to be studied, as family law is the most gendered area in the use of the court.

Secondly, interesting findings on the kind of case brought to the court include: (1) There are some gender differences in the type of claim. "Traffic accident" and "real property title, registration-related" rank higher for female plaintiffs than male; (2) Though "torts" are the most frequent claim for both men and women, a specific kind of torts, i.e., female's compensation claim against her husband's adultery partner is outstanding.

Thirdly, as to the result of the litigation, females seem to be more cautious in choosing to sue and a little more eager to negotiate: (1) In-court settlement is the most favored result for both male and female plaintiffs, but the percentage is slightly higher for females; (2) Even though the affirmation rate is slightly lower for females, their rate of partial affirmation is higher and lower in the rate of withdrawal and dismissal.

When being sued, adding to the fact that female is the smallest category of defendants, women show some specificity: (1) In the ranking of defendant's cases, for example, the category of "Credit-related [incl. credit card-related

claims] " is the second largest category for male, but it is the fourth rank for female; (2) The amount of dispute in defendant's cases is lower for female than male; (3) Male defendants self-represent more often than female defendants; (4) Female defendant tends to be represented by one lawyer, more often than male.

To conclude, women seem not only to take distance from the court but also to have specific needs. They seem more reluctance than men to bring their problems to the court, because they feel their action more restricted living in the web of relationship in society. But when they come to the court, they seem to look for an authoritative decision-making by the court to solve the problem their social powerlessness and privateness of their life hinder to resolve it by themselves. They ask the court as a public agent to punish on their behalf the breaker of their peace.

A gender statistics, as well as case studies, might help to figure out what women suffer and struggle against in society. It will also specify the women's needs for civil justice.

[Notes]

- 1 Other: two cases that lack record on defendant by mistake. Basically, the cases where both parties are corporate have been excluded from our sample, as we focus on individual decision-making.
- 2 The original 15 types are: Loan-related, Surety-related, Purchase money-related, Credit-related [incl. credit card-related claims], Contract-related damages, Subcontract-related, Traffic accidents, Torts (excl. traffic accidents), Rent-related, Ownership of land or building, Real property title registration-related, Divorce-related, Inheritance-related, and Other.
- 3 In this male case, the plaintiff sued the male defendant claiming 3 million yen, ended with withdrawing. Both litigants were self-represented.
- 4 Matrimonial cases were moved into the jurisdiction of family courts by statutory change in 2004.
- 5 In the few remained inheritance cases, the relationship is obvious, though.

How Female Views on Litigation: Preliminary Ten Findings

Yasuhiro WADA

【Abstract】

This paper summarizes the feelings and tendencies of females regarding civil litigation. The data was collected in a survey conducted of the general public of Japan in 2007. Each respondent was asked about civil lawsuit, and the findings discussed herein relate to the following : women's expectations of litigation, their actual court experiences, their images and impressions of litigation, the relationship with representing lawyers and lawsuit, and their expectations of their representing lawyers and presiding judges. In conclusion, the data suggests that women are more inclined than men are to consider a lawsuit as serious and burdensome.

【Key words】 gender, litigation, survey, lawyers, court, lawsuit

. Introduction

A survey was conducted in 2007, where members of the general public (n=1000) were asked about litigation. The goal of the survey was to compare the responses of the general public with the responses in a related survey of respondents who were litigants. See another paper by the same author, "What Do They Expect When Ordinary People Think About Civil Litigation?: A Survey Analysis", in Human Sciences : Bulletin of Osaka Prefecture University, Vol. 3 (2008), overviewing the above survey and presenting a quick summary of the

basic points of the research. This survey provides the basis for our set of researches, on which briefly mentioned in the concluding notes at the end of this paper.

Naturally, regarding their perceptions and expectations with respect to various aspects of litigation, respondents who have experienced litigation may differ from the general public. This paper explores the basic research from the gender perspective and presents generalized statements regarding female's views of lawsuits, lawyers and judges. We discuss them in order with some basic figures.

. Findings

- (1) Court experience of males exceeds that of females.

As shown in Table A-1 below, the number of individuals who have experienced civil lawsuit is very limited. Only thirty-eight men among 475 (8.0%) and seventeen of 515 women (3.3%) reported litigation experience. The statistical significance with which male exceeds female is 99%. Similarly, those who have engaged in mediation are rather limited, with only 40 of 476 men (8.4%) and 26 of 516 women (5.0%) having mediated. Males exceeded females with a 95% statistical significance.

Table A-1: Court experience, and gender

Lawsuit			
	Yes	No	Total
Male	437	38	475
Female	498	17	515
Total	935	55	990
Mediation			
	Yes	No	Total
Male	436	40	476
Female	490	26	516
Total	926	66	992

- (2) Females desire to engage in litigation no less than males.

Table A-2 illustrates the responses of men and women when asked: Do you want to use civil lawsuit when you face significant problems? If one simply examines the "yes" and "no" answers, the men seem to prefer to engage in litigation slightly more. However, this gender distinction is less significant when one considers the other three categories, which are "more likely yes", "unsure", and "more likely no".

Table A-3 shows the same cross-tabulation but further distinguishes the respondents into groups of those who have and have not had prior civil lawsuit experience. Among those who have prior experience, the "unsure" responses decreased by ten (10) percentage points (from 33.4% to 23.5%). The percentage of men and women who responded "yes" increased by several points (from 24.0% to 27.8% for men, and from 20.3% to 26.7% for women). Thus the data seems to show no distinction between the number of men and women who desired to engage in litigation.

Table A-2: Desire to engage in litigation, gender

	Yes	More likely yes	Unsure	More likely no	No	Total
Male	103	114	134	64	14	429
Female	90	118	157	57	21	443
Total	193	232	291	121	35	872

Table A-3: Desire to engage in litigation, gender (by Lawsuit experience)

		Yes	More likely yes	Unsure	More likely no	No	Total
Not experienced	M	91	104	126	58	11	390
	F	85	115	150	53	21	424
	T	176	219	276	111	32	814
Experienced	M	10	10	7	6	3	36
	F	4	3	5	3	0	15
	T	14	13	12	9	3	51

We may conclude by noting that even though men tend to have more court experience than women, women are not necessarily reluctant to engage in litigation. Perhaps, women would likely use it more often given the opportunity to gain familiarity with court proceedings.

(3) Females tend to consider lawsuits more burdensome than males.

Table A-4 relates gender to the respondents' images and impressions of lawsuits in terms of cost, time, and stress. Generally speaking, 80% or more of all the respondents thought of lawsuits as costly, time-consuming, and stressful. In comparison, women seem to have a still more negative image of lawsuit. Compared to men, more women regard lawsuits as stressful, costly and time-consuming.

A related survey question asked the respondents if they have positive or negative image toward court itself. As shown in Table A-5, the responses are slightly more negative than positive. But the majority of them are not either negative nor positive, and more women responded that they were "unsure" about the court itself than did men. This finding seems to be showing that females tend to

Table A-4: Impression of lawsuit, gender

Lawsuit is expensive						
	Disagree	Somewhat disagree	Unsure	Somewhat agree	Agree	Total
Male	11	19	39	197	180	446
Female	11	11	33	196	212	463
Total	22	30	72	393	392	909
Lawsuit is time-consuming						
Male	6	9	31	164	246	456
Female	6	15	40	162	261	484
Total	12	24	71	326	507	940
Lawsuit is stressful						
Male	3	10	37	155	262	467
Female	2	3	28	143	326	502
Total	5	13	65	298	588	969

Table A-5: Overall image of court, gender

	Positive	On balance, Positive	Unsure	On balance, Negative	Negative	Total
Male	14	51	263	99	27	454
Female	8	44	294	105	21	472
Total	22	95	557	204	48	926

have a "heavier" image of lawsuit than males.

(4) Females consider their choice of lawyers more seriously.

Table A-6 illustrates the responses to a question which asks whether the respondents will consult lawyers when they face significant problems and consider litigation. More than 90% of all respondents consider taking legal advice and nearly half of women (42.1%) responded that they would consult with two or more lawyers while only one third of men (34.5%) responded the same.

Table A-7 demonstrates the responses to another question where those surveyed were asked about their presumed difficulty of looking for a lawyer. More women than men think it would be a difficult task.

Table A-8 relates the respondents' gender preference of their representing attorneys. The results show that, first, the majority of respondents, both men and women, seem to accept either male or female lawyers (58.3% and 54.9%). Secondly, among those who have gender preference, men prefer male lawyers, while some women prefer male lawyers and others prefer female lawyers. Finally, female lawyers are preferred almost only by women ; more than 80% of those who have the preference for female lawyers are women.

Table A-9 analyzes the respondents' gender preferences of representing attorneys in light of the respondents' age. The results suggest that variable of age is correlated to gender bias. Among those who have the preference for female lawyers, younger people outweigh older people, while older people show the preference for male lawyers compared to younger people.

Table A-6 : Likelihood of consulting with lawyers, gender

	Not likely to consult a lawyer	Likely to consult with one lawyer	Likely to consult with more than one lawyer	Total
Male	25	241	140	406
Female	23	211	170	404
Total	48	452	310	810

Table A-7 : Difficulty of looking for lawyers, gender

	Easy	Fairly easy	Unsure	Fairly difficult	Difficult	Total
Male	31	63	78	178	112	462
Female	20	36	73	201	155	485
Total	51	99	151	379	267	947

Table A-8 : Preference of representing lawyer's gender, gender

	Male Lawyer	More likely, M Lawyer	Neutral	More likely, F Lawyer	Female Lawyer	Total
Male	67	105	268	12	8	460
Female	31	81	256	60	38	466
Total	98	186	524	72	46	926

Table A-9 : Preference of representing lawyer's gender, age

	Male Lawyer	More likely, M Lawyer	Neutral	More likely, F Lawyer	Female Lawyer	Total
70s +	23	24	53	11	5	116
60s	20	31	106	10	8	175
50s	25	34	99	10	7	175
40s	13	33	85	10	10	151
30s	13	44	116	14	10	197
20s	4	20	65	17	6	112
Total	98	186	524	72	46	926

Table A-10 analyzes the same responses, but divides the results by the variable of gender. The results are summarized as follows. First, older men abhor female lawyers. Second, younger men tolerate female lawyers. Third, older women prefer male lawyers while they also accept female lawyers. Fourth, younger women strongly prefer female lawyers.

Thus we could conclude that both gender and age correlate to the gender

Table A-10 : Preference of representing lawyer's gender, age (by Gender)

	Male Lawyer	More likely, M Lawyer	Neutral	More likely, F Lawyer	Female Lawyer	Total
70s+ male	16	14	29	2	0	61
60s male	10	14	54	0	1	79
50s male	17	15	52	2	0	86
40s male	10	22	40	1	3	76
30s male	10	27	56	2	2	97
20s male	4	13	37	5	2	61
Total	67	105	268	12	8	460
70s+ female	7	10	24	9	5	55
60s female	10	17	52	10	7	96
50s female	8	19	47	8	7	89
40s female	3	11	45	9	7	75
30s female	3	17	60	12	8	100
20s female	0	7	28	12	4	51
Total	31	81	256	60	38	466

preference of representing lawyers. The data also seems to show that some women prefer female lawyers. This preference may relate to the apprehension that some women tend to feel when faced with a lawsuit. In sum, the evidence suggests that females consider their choice of lawyer more seriously than males.

(5) Female pays attention to "reputation" in selecting lawyers.

Question 10 inquires into whether the respondents consider certain factors relevant in their selection of lawyers. Eleven items were asked about on the questionnaire : (i) the lawyer's personal character, (ii) the lawyer's ability, (iii) the lawyer's field of expertise, (iv) the lawyer's reputation, (v) the lawyer's fees, (vi) the lawyer's willingness to listen attentively in consultation, (vii) a feeling of obligation to the person who introduced the lawyer, (viii) the reliability of the person or organization that introduced the lawyer, (ix) the fact you knew the lawyer personally beforehand, (x) the fact the lawyer said you could win the case, and (xi) the fact no other lawyers are available.

Table A-11 displays the results of both the males and females, and it evidences that females consider "reputation" much more than males. While there are no

Table A-11 : Relevance of "reputation" in selecting lawyers, gender

	Consider	Somewhat consider	Unsure	Hardly consider	Do not consider	Total
Male	202	196	49	9	3	459
Female	278	189	31	1	3	502
Total	480	385	80	10	6	961

clear differences between the answers of male and female in terms of other ten factors, the answers indicated that more women than men "consider" each factor (though the tables are not shown in this paper). These two points seem consistent with the comments in preceding sections : (3) that females tend to consider lawsuits more burdensome than males, and (4) that females consider their choice of lawyers more seriously.

(6) Males and females have similar expectations of lawsuits.

Question 13 asks respondents about their expectations of lawsuits, assuming they have decided to file an action. With regard to this question, the questionnaire inquired about ten potential expectations. The respondents were asked whether they expected (i) to achieve social justice, (ii) to protect their rights, (iii) to resolve the dispute quickly, (iv) to get the opportunity to talk with the other side, (v) to restore relations with the other side, (vi) to clearly decide right and wrong, (vii) to protect their interests, (viii) to punish the other side, (ix) to compel the other side to admit the wrongs, and (x) to have a judge hear what you have to say. With regard to these expectations, there was no significant difference between males and females.

(7) Females tend to worry more when considering litigation.

The following question (Q14) asked respondents to what extent they worry about specific factors in light of their decision to litigate. Those factors are : (i) money, (ii) time, (iii) the probability of winning, (iv) the probability

that the other side will not respect the judgment, (v) the reaction of family members, friends, etc., and (vi) likelihood of litigation affecting family members, friends, etc. negatively. Table A-12 shows the results. The results evidence that women tend to worry more about each factor, but they worry especially more about the last two factors. Both of those relate to a consideration of others and of their surroundings, which may suggest that females tend to be more alert to the potential negative side effects of litigation. Again, these results seem consistent with the aforementioned comments : (3) that females tend to consider lawsuits more burdensome than males, and (4) that females consider

Table A-12 : Factors that cause respondents to worry when filing lawsuit, gender

Cost (Expense of money)						
	Causes worry	Somewhat causes worry	Unsure	Causes little worry	Does not cause worry	Total
Male	336	117	14	5	473	506
Female	405	94	6	0	1	
Total	741	211	20	5	2	979
Expense of time						
Male	301	144	16	11	0	472
Female	349	145	8	4	0	506
Total	650	289	24	15	0	978
Probability of winning						
Male	288	138	36	3	3	468
Female	342	139	22	0	2	505
Total	630	277	58	3	5	973
Possibility that opposing party will not comply with judgment						
Male	228	167	46	16	7	464
Female	275	163	45	10	3	496
Total	503	330	91	26	10	960
Reaction of family members, friends, etc.						
Male	131	185	77	55	19	467
Female	202	182	67	38	12	501
Total	333	367	144	93	31	968
Likelihood of litigation affecting family members, friends, etc. negatively						
Male	195	175	58	25	7	460
Female	283	145	47	14	5	494
Total	478	320	105	39	12	954

their choice of lawyers more seriously.

(8) Females expect more of the representing lawyers.

Question 18 asks respondents about the expectations they have of their representing lawyers, assuming they have decided to file a lawsuit. The questionnaire identified the following potential expectations : (i) listening attentively and trying to understand the client, (ii) explaining legal matters plainly, (iii) devising good solutions for all parties including the other side, and (iv) giving careful consideration to relevant non-parties, such as family members. Table A-13 shows that female expects more of their representing attorney in every factor. This result suggests females' inclination to regard lawsuit as "heavier" and more serious, which is common to the aforementioned conclusions : (3) that females tend to consider lawsuits more burdensome than males, (4) that females consider their choice of lawyers more seriously, and (7) females tend to worry more when considering litigation.

Table A-13 : Respondents' Expectations of representing lawyers, gender

Listening attentively and trying to understand respondent						
	Expect	Somewhat expect	Unsure	Hardly expect	Do not expect	Total
Male	309	131	18	9	3	470
Female	362	127	12	3	2	506
Total	671	258	30	12	5	976
Explaining legal matters plainly						
Male	339	118	12	2	1	472
Female	394	107	4	0	0	505
Total	733	225	16	2	1	977
Devising good solutions for all parties including the other side						
Male	280	138	35	13	3	469
Female	326	139	30	6	1	502
Total	606	277	65	19	4	971
Giving consideration to relevant non-parties, such as family members						
Male	235	162	51	11	9	468
Female	279	169	35	14	2	499
Total	514	331	86	25	11	967

Table A-14 : Feeling of vexatiousness in filing lawsuit, gender

	Vexatious	On balance, vexatious	Unsure	On balance, not vexatious	Not vexatious	Total
Male	179	174	84	9	16	462
Female	196	177	84	14	9	480
Total	375	351	168	23	25	942

(9) Male and female show the similar responses on vexatiousness in lawsuit.

Question 19 asks respondents to what extent they feel vexatious (wazurawashii in Japanese, meaning complicated and troublesome), if they have decided to file a lawsuit or have been filed against. Table A-14 shows that a vast majority of respondents feel vexatious or somewhat vexatious, with no significant differences among men and women. This finding implies that we can separate an important feature of female's inclination to regard lawsuit as serious and burdensome from the vexatiousness which a majority of people, regardless of gender, feel when filing a lawsuit. Thus, we could not assume that the reason why women tend to consider litigation as more serious and burdensome is because of their feeling vexatious or frivolous in filing the lawsuit. Other inherent reasons must exist for their tendency to think of lawsuits as burdensome and outstanding.

(10) Female also has higher expectations of presiding judges.

Another question (Q21) inquires about the respondents' expectations of the presiding judge, assuming they have decided to file a lawsuit. Respondents considered the following expectations : (i) that the judge will listen carefully to what the respondent has to say, (ii) that the judge adequately understands the issues and background of the case, (iii) that the judge will speak to them in plain words, (iv) that the judge will be impartial, (v) that the judge will promote a settlement, (vi) that the judge will issue a judgment quickly, and (vii) that the judge will act in an authoritative manner. As shown in Table A-15, the

Table A-15 : Respondents' expectations of presiding judges, gender

Listening carefully to what respondent has to say						
	Expect	Somewhat expect	Unsure	Hardly expect	Do not expect	Total
Male	303	127	22	14	4	470
Female	368	106	23	7	2	506
Total	671	233	45	21	6	976
Understanding the issues and background well						
Male	337	108	18	9	3	475
Female	387	97	15	6	2	507
Total	724	205	33	15	5	982
Speaking to respondent in plain words						
Male	338	108	13	13	3	475
Female	386	101	15	6	1	509
Total	724	209	28	19	4	984

female respondents tended to have higher expectations of the judges on the first three items, while there seems to be no significant distinction between men and women on the last four. The former items concern consideration which could be shown by the judge to the litigants, while the latter relates to institutional matters. Here again, we could see female's inclination to regard lawsuit as serious and burdensome.

. Conclusion

In this paper, the author reported female views on civil litigation in Japan through the nationwide quota sampling questionnaire survey to the general public. In general, the data suggest females' inclination to regard lawsuit as serious and burdensome. This conclusion becomes apparent through several findings, including that (3) females tend to consider lawsuits more burdensome than males, (4) females consider their choice of lawyers more seriously, (7) females tend to worry more when considering litigation, and (8)&(10) female have higher expectations of their representing lawyers and of the presiding

judges.

The data we used here are all cases but some missing values, "Don't know" and "No answer." It is reasonable to doubt whether we would come to the same conclusion if we excluded the respondents who have litigation experience. With the tables of "experienced" respondents excluded (i.e., Table B-1 through Table B-15, not shown in this paper), which correspond to Table A-1 through Table A-15, the findings we have presented in this paper are confirmed.

【Concluding Notes】

This paper forms a part of the research on Japanese litigation behavior undertaken by the Civil Litigation Behavior Research Group, Group C of the Nationwide Survey on Civil Disputes (Japan) research project, "Dispute Resolution and Civil Justice in a Legalizing Society." Group C is constituted of seven Samurai : Daniel H. Foote as the chief, Shozo Ota, Shusuke Kakiuchi, Mikio Kawai, Akira Moriya, Yuriko Kaminaga, and Yasuhiro Wada.

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An Internet Survey Experiment Analyzing the Japanese People's Judgment on the Use of Lawyers and Courts The Findings From a Nationwide Internet Survey of the General Public Regarding Civil Litigation

Tomohiko MAEDA

1. Introduction: Research design and objective

In this paper, I present an overview of our study, A Nationwide Internet Research of the General Public Regarding Civil Litigation. This research is a follow-up to an earlier study titled A Nationwide Survey of Civil Litigants and Their Lawyers, which was a self-administered survey via questionnaire. We investigated experiences of civil litigants and their lawyers, focusing on the decision-making process by litigants and their evaluation of the civil litigation system.

Our previous survey had limitations. First, the survey contained numerous case types. Findings from prior studies (and our survey) indicate that case type could cause significant effects on courses of conflict and affect parties' view of the case and the dispute resolution system¹. Numbers of samples of litigants in a given case type was so limited that it was impossible to conduct a statistical analysis of our hypothesis to evaluate the factors affecting litigants' decisions in a given type of case.

Second, our survey excluded litigants and their lawyers of cases involving personal affairs (Jinji-Sosho) from our target population because of the difficulty in accessing those case files². Personal affairs suits, such as divorce proceedings,

include some important areas for dispute resolution studies.

Our current Internet survey is an experiment planned to provide empirical data about the factors, in certain types of cases, affecting the general public's evaluation of the use of lawyers and the civil justice system. We conducted the research and survey implementation using one of the Internet survey companies, Borders Inc., in January 2008.

Our survey experiment is designed to compare respondents' answers to three scenarios, each involving a particular type of legal conflict. We prepared several variations for each scenario with differentiated control factors from our hypothesis about their evaluation of using law in each case type. The scenarios for Questions 5 and 7 have four (2 × 2) variations because each scenario contains two factors with two categories. The story for Question 6 has six (2 × 3) variations with two control factors. We prepared twelve types of the questionnaire and assigned each to a randomly selected group of monitors from those self-registered with the Internet survey site. We gathered 100 samples (50 men and 50 women) for each type of questionnaire. Numbers of samples from each age group (twenties, thirties, forties, fifties, and sixties) are restricted according to the proportion of them in the Japanese general public (Table 1).

Prior studies about Internet research methods established that there are substantial differences between respondents in Internet survey/research and samples from the Japanese general public in other established types of surveys. These differences also exist between the same samples' responses to Internet

Table 1. Numbers of samples assigned to sex/age groups for each type of questionnaire.

Male 20-29	10	Female 20-29	9	20-29 Total	19
Male 30-39	11	Female 30-39	11	30-39 Total	22
Male 40-49	9	Female 40-49	9	40-49 Total	18
Male 50-59	11	Female 50-59	11	50-59 Total	22
Male 60-69	9	Female 60-69	10	60-69 Total	19
Male Total	50	Female Total	50	Total	100

questionnaires and oral or printed questionnaires³. Taking these findings into consideration, we designed the center of our survey experiment to be a comparison between responses to different variations of similar questions. This method is widely adopted in psychological experiments, where respondents (such as university student volunteers) are usually not random samples of the general public.

In the main section of the survey, we asked respondents questions about three scenarios, which involved different legal conflicts: "(A)" which was a loan collection from a cousin, "(B)" which was a fight with an unfamiliar man involving compensatory damages, and "(C)" which was a divorce claim resulting from a partner's domestic violence. Each scenario had several variations (four for both (A) and (C); and six for (B)) which are different in points related to hypothetical factors of respondents' evaluation about using law in each case. Thus, questions allowed respondents to evaluate law multiple times depending on the incident. More pointedly, we asked the respondents to suppose the incident happened to someone close to them (one of their friends or close relatives) and answer whether they consider it advisable to consult a lawyer, file for conciliation, file a lawsuit, or talk to the police. In addition to differentiating the scenarios, we asked respondents about their thoughts about law and courts at the beginning of the questionnaire. We also asked questions about social attitudes (aggressiveness and gender bias) and demographical background. Some typical background factors, such as sex, age, and annual income had been asked by the research company when the respondents registered themselves as monitors. We also used these additional factors in our analysis.

2. Findings

(A) Loan collection case

In Question 5, we tested two hypotheses. First, we hypothesized that in a

monetary scenario like a loan collection, when a large amount of money is at the stake, respondents consider the use of law and the courts to be more necessary or desirable. Second, we hypothesized that litigants and their friends think it is more acceptable of an outcome to lose a case in court than to "lose" by settlement.

At the head of Question 5, we told the survey respondents a story where a friend of the respondent has trouble collecting a loan without interest from a cousin. The amount in dispute is 300,000 yen (in the low stake variations) and 1,500,000 yen (in the high stake variations). Factorial ANOVA of the responses shows that respondents view using a court (filing for conciliation and filing a lawsuit) and/or talking to the police more positively when the stakes are high (1,500,000 yen). This result supports our first hypothesis well (Table 2).

In the latter part of Question 5, we presented the subsequent development of the story but this time after filing lawsuit against the cousin. The plaintiff (survey respondent's friend) ultimately forfeited the case because the judge encouraged in-court settlement and the plaintiff's lawyer estimated they would eventually lose the case because they lacked evidence. In these evidentiary bleak

Table2: Significance of effects of factors on variables for answers to Question 5. (Probability of F score calculated by ANOVA)

Variables (Questions)	Amount in dispute	Settlement or Judgment	Interaction Effect
(Scenario #1) Consult a lawyer	0.0000	0.7783	0.3275
(Scenario #1) Male or female lawyer	0.0834	0.5869	0.0757
(Scenario #1) File a conciliation	0.0040	0.7135	0.4870
(Scenario #1) File a lawsuit	0.0005	0.7229	0.1307
(Scenario #1) Consult police	0.9953	0.8010	0.2199
(Scenario #1) (A) "It is wrong that your friend, who actually loaned the money, should lose just because of lack of evidence." VS. (B) "If your friend does not have evidence, losing the case cannot be helped."	0.4241	0.0147	0.2866
(Scenario #1) Fairness of the result	0.2866	0.0703	0.1445
(Scenario #1) Acceptability of the result	0.9855	0.4558	0.4942

developments that involved judicial decision-making, the plaintiff declined settlement and the claim was dismissed. In identical variations that added settlement as a factor, the plaintiff followed the lawyer's advice and reached settlement but with only nominal payment (200,000 yen for a 1,500,000 yen claim; 50,000 yen for a 500,000 yen claim). Again factorial ANOVA shows that under decisional variations respondents are more likely to value the result as "just," view their friend's loss as inevitable, and view the loss in general as bearable if the claim lacks enough evidence. But there is no statistically significant effect of the "acceptableness" of the result. It seems that trusting judges' authority helps the result of a lawsuit to be seen as legitimate, and perhaps acceptable, by virtue of a judges' decision.

In addition, there is no statistically significant interaction between two independent variables: amount in dispute and result of lawsuit.

(B) Tort case (damages compensation from a fight with an unfamiliar man)

In Question 6, we tested our hypothesis about the effect of monetary cost and length of litigation in relation to the result of lawsuits. We assume that people consider the result of a lawsuit (that is, partial acknowledgement of a claim) to be more just and acceptable if it takes less money and/or less time.

We showed the survey respondents a story about an injury suffered by Mr. A, "a relative of the survey respondent" from a fight with Mr. B, an unknown man, who caused the fight, struck him one-sidedly, and refused to give compensation for the damages. First, as in Question 5, we asked respondents about their evaluation of using law in the case. Then we showed the rest of the story where Mr. A files a civil litigation against Mr. B and gets awarded 2,000,000 yen. In exchange for his victorious judgment, he expended money and time litigating, which differs from one story variation to another. We made two categories for Mr. B's expenses, 500,000 yen in the low-cost variations and 1,000,000 yen in the high-cost variations. We made three categories for the length of the lawsuits

namely one-year, two-year, and three-year, respectively. It takes about one and half years, on the average, for a given civil case to reach judgment of first instance in Japan. So, we assumed that for a one-year variation, lawyers would evaluate the court's handling of this case to be rather expeditious. After showing the story, we ask the respondents about their assessments of costs.

It is worth noting that, according to the result of factorial ANOVA, the duration of the lawsuit did not affect the respondents' evaluation of monetary cost (Table 3). Our survey also shows that even a one-year lawsuit is considered a rather "long" period. It seems that if a civil lawsuit lasts a year that is too long for those not a party to it. Duncan's multiple comparison shows that there is a significant difference in the average score of the "short or long" variable between one-year variations and longer durations (Table 4). It also seems that the Japanese legislature was rather reserved in enacting an obligation on the judiciary and lawyers to finish a trial of first instance within two years from its filing, at least in regard to the view of the general public (or outsiders of the courts).

What are the effects of monetary and time costs of a lawsuit on the people's

Table 3: Significance of effects of factors on variables for answers to Question 6.
(Probability of F score calculated by ANOVA)

Variables (Questions)	Time required	Monetary cost	Interaction Effect
(Scenario #2) Consult a lawyer	0.5482	0.8524	0.7181
(Scenario #2) Male or female lawyer	0.1722	0.1431	0.2149
(Scenario #2) File a conciliation	0.3598	0.8295	0.2260
(Scenario #2) File a lawsuit	0.1532	0.8791	0.5365
(Scenario #2) Consult police	0.8343	0.3599	0.5795
(Scenario #2) Monetary cost (1 for inexpensive / 5 for expensive)	0.7663	0.0000	0.9527
(Scenario #2) Period of time required (1 for short/ 5 for long)	0.0000	0.1530	0.5825
(Scenario #2) Fairness of the result	0.7705	0.0166	0.9267
(Scenario #2) Acceptability of the result	0.6266	0.0001	0.7710

Table 4: Comparison of mean score among variations of time required for the lawsuit. (Result of Duncan's multiple comparison)

	(Story#2) Time required	Number of cases	Homogeneity subsets (α=.05)	
			2	1
Duncan (a)	1-year	392	4.39	
	2-year	396		4.60
	3-year	392		4.67
	Significance		1.000	.205

Showing mean scores for homogeneity subsets.
Harmonized mean of sample sizes = 393.324

evaluation of its fairness and acceptability? According to the result of factorial ANOVA, only monetary expense has statistically significant effect on their evaluation of a case's outcome. Length of litigation has no effect on this aspect. They view an awarding of 2,000,000 yen to be more unfair and unacceptable when it requires a lot of money (half of the award) to reach that judgment.

(C) Domestic violence and divorce case

In Question 7, we tested our hypothesis about the effects of stereotypes on domestic violence and divorce cases. We assume that respondents would take domestic violence more seriously and be more willing to use law when a husband is violent with his wife. We also assume that most people consider only physical violence worthy of legal adjudication, though domestic violence also includes negligence and mental abuse.

Factorial ANOVA shows that people perceive using law (consulting a lawyer, filing for a divorce conciliation, and talking to the police) more positively if a woman suffers domestic violence and wants a divorce. It also shows that respondents consider forceful measures (filing a divorce proceeding and talking to the police) to be desirable if the domestic violence contains physical battery and injuries (Table 5). Sex of the victim and severity of violence interact with each other when it comes to desirability of divorce in this hypothetical case. Female

Table 5: Significance of effects of factors on variables for answers to Question 7. (Probability of F score calculated by ANOVA)

Variables (Questions)	Sex of victim	Severity of Violence	Interaction effect
(Scenario #3) Consult a lawyer	0.0001	0.2891	0.1285
(Scenario #3) Male or female lawyer	0.0000	0.2319	0.1597
(Scenario #3) File a conciliation	0.0008	0.0487	0.0573
(Scenario #3) File a lawsuit	0.0514	0.1865	0.9687
(Scenario #3) Consult police	0.0000	0.0000	0.5484
(Scenario #3) (A) "The couple should discuss and start their married life over again." VS. (B) "The couple should divorce, since one spouse wishes to do so."	0.0000	0.0031	0.0095

Table 6: Comparison matrix of mean score of "Desirability of divorce" variable among scenario variations (Result of ANOVA)

(Scenario #3) Sex of victim	(Scenario #3) Severity of Violence	Means	Standard Deviance	95% confidence interval	
				Lower limit	Upper limit
Female	Mental	3.623	.064	3.499	3.748
	Physical	3.977	.064	3.852	4.101
Male	Mental	3.430	.064	3.305	3.555
	Physical	3.453	.064	3.329	3.578

victims suffering physical violence make respondents particularly likely to reject the view that "The couple should discuss and start their married life over again" and agree to the view that "The couple should divorce, since one spouse wishes to do so." This result suggests the effect of the domestic violence stereotype where a husband abuses his wife physically, which requires public authority intervention such as the police (Table 6).

Factorial ANOVA shows that respondents feel female domestic violence victims are better off consulting female lawyers. This data supports our hypothesis about gender bias where female lawyers are seen as specialists and guardians of female victims.

(D) Differences by respondents' sex

One of the important hypotheses we tested is that men and women are different in their preference of their lawyer's sex. With regard to all three scenarios, we asked whether a male or female lawyer is preferable for consultation. The result of the research shows that it depends on the type of case involved (Table 7).

In regards to the loan collection case, a majority of both male and female respondents answered, "Can't say either way." One-way ANOVA shows that there is no significant difference of average score between them. In the tort case, a majority of men and women answered neutrally, too - but more women respondents prefer a male lawyer than their male counterparts (Table 8). Finally, regarding the domestic violence and divorce claim, male and female respondents showed the most significant difference. In these types of cases, only a minority of women respondents said, "Can't say either way." Women show statistically significant preference for female lawyers (Table 9).

On one hand, women tend to rely on masculine lawyers when the opposing party appears violent. On the other hand, they also seem to view female lawyers as their guardians in domestic problems.

Table 7: (Scenario #3) Preference of sex of lawyer in the loan collection case.

			(Scenario #1) Which do you think better to consult a male or female lawyer?					Total
			Better to consult a male lawyer.	On the balance, better to consult a female lawyer	Can't say either way	On the balance, better to consult a female lawyer.	Better to consult a female lawyer.	
Sex	Male	Number	46	120	358	40	10	574
		%	8.0%	20.9%	62.4%	7.0%	1.7%	100.0%
Sex	Female	Number	19	143	320	62	8	552
		%	3.4%	25.9%	58.0%	11.2%	1.4%	100.0%
Total*		Number	65	263	678	102	18	1126
Total*		%	5.8%	23.4%	60.2%	9.1%	1.6%	100.0%

* Showing the numbers for all the variations combined.

Table 8: (Scenario #2) Preference of sex of lawyer in the tort case.

			(Scenario #2) Which do you think better to consult a male or female lawyer?					Total
			Better to consult a male lawyer.	On the balance, better to consult a female lawyer	Can't say either way	On the balance, better to consult a female lawyer.	Better to consult a female lawyer.	
Sex	Male	Number	89	124	324	36	7	580
		%	15.3%	21.4%	55.9%	6.2%	1.2%	100.0%
Sex	Female	Number	95	166	275	22	5	563
		%	16.9%	29.5%	48.8%	3.9%	.9%	100.0%
Total*		Number		290	599	58	12	1143
Total*		%		25.4%	52.4%	5.1%	1.0%	100.0%

Table 9: (Scenario #2) Preference of sex of lawyer in the domestic violence and divorce case.

			(Scenario #2) Which do you think better to consult a male or female lawyer?					Total
			Better to consult a male lawyer.	On the balance, better to consult a female lawyer	Can't say either way	On the balance, better to consult a female lawyer.	Better to consult a female lawyer.	
Sex	Male	Number	13	24	241	186	121	585
		%	2.2%	4.1%	41.2%	31.8%	20.7%	100.0%
Sex	Female	Number	13	34	223	191	116	577
		%	2.3%	5.9%	38.6%	33.1%	20.1%	100.0%
Total*		Number		58	464	377	237	1162
Total*		%		5.0%	39.9%	32.4%	20.4%	100.0%

[Notes]

- 1 See, Masayuki Murayama and Yoshiyuki Matsumura (Ed.) Basic Report of the Survey on Dispute Resolution Behaviors, Yuhi-kaku, 2006.
- 2 Jurisdiction of personal affairs suits are transferred from district court to family court as of 2004. Of those cases terminated in 2004, some cases were filed at district court before the transfer while others were filed at family court thereafter. Japanese courts keep their case files at the court where cases are originally filed after the cases' final determination. Thus, files of personal affairs cases are broken up between district and family courts.
- 3 See, Norie Honda and Akira Motokawa, Can internet survey be used for social survey?: Result from an experimental study, The Japan institute for labour policy and

training, 2005. Noboru Ohsumi, "Internet surveys: A review of several experimental results: Applying data science approach to the exploration of internet survey," Keiryō-Kōhō-gaku, vol. 29 no. 1, pp20-44.

Internet Survey on Use of Lawsuits¹

【Survey Design】 Nationwide Survey on Civil Disputes, Litigation Behavior Research Group

【Lead Researcher】 Daniel H. Foote, Professor, The University of Tokyo

【Survey Implementation】 Borders, Inc.

Introduction

Thank you very much for participating in this survey.

- We are a group of legal researchers, conducting research aimed at improving Japan's civil litigation system for the 21st century. We have received public funding for this public opinion survey. We recognize that you are very busy, and we greatly appreciate your willingness to participate in this survey.
- We estimate that it should take about twenty minutes to complete this questionnaire. The questions relate to how you feel and what you think regarding the use of lawsuits and lawyers, so there are no "correct" answers. Please respond frankly regarding your feelings about lawsuits and lawyers. If there are aspects you would like to address that are not covered by the questions, we would be grateful if you could let us know by using the space provided at the end of this questionnaire.
- The results of this survey will be placed in numerical form and analyzed statistically. Accordingly, there is no possibility that your name or your answers could be identified from the results of the research.

First, we ask you about your experience of lawsuits and your general image of law, lawsuit, and lawyers.

Question 1

(1) Have you yourself ever experienced any civil lawsuit in your life? (Please exclude criminal cases and cases in which you were involved as a part of your job.) Please choose the single most applicable response. If you have experienced one or more civil lawsuits, please indicate how many by placing the number in the space provided.

- 1 No.
- 2 Yes. () cases
- 3 I don't know.

* If the respondent chooses 2, a pull-down menu appears, from which the respondent selects the appropriate number. (The choices on the pull-down menu are: "I don't remember," "1," "2," "3," and "4 or more".)²

(2) Have you yourself ever experienced conciliation at a court in your life? (Please exclude conciliation cases in which you were involved as a part of your job.) Please choose the single most applicable response. If you have experienced one or more conciliations, please indicate how many by placing the number in the space provided.

- 1 No.
- 2 Yes. Number of Family Court conciliation cases () cases
Number of Summary Court conciliation cases () cases
- 3 I don't know.

* If the respondent chooses 2, pull-down menus appear inquiring about the number of Family Court cases and Summary Court conciliation cases. For each of those questions, the pull-down menus are identical to the pull-down menu in Question 1 (1).

(3) In the past 5 years (since January 2003) , have you experienced any problem

which made you consider consulting a lawyer ? Please exclude problems which you have dealt with as a part of your job. Please choose the single most applicable response. If you have one or more such experience, please indicate how many by choosing from the responses in the pull-down menu.

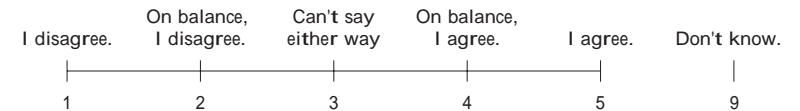
- 1 No.
 - 2 Yes. () cases
 - 3 I don't know.
- * If the respondent chooses 2, a pull-down menu appears, from which the respondent selects the appropriate number. The choices on the pull-down menu are identical to the pull-down menu in Question 1 (1).

Question 2

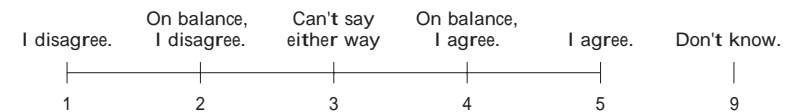
Do you agree or disagree with the following statements about lawsuits? Please answer the following questions in terms of the applicable degree. Please choose the single most applicable response.

* Utilize radio-buttons to show choices for the respondent, in accordance with the scale below.

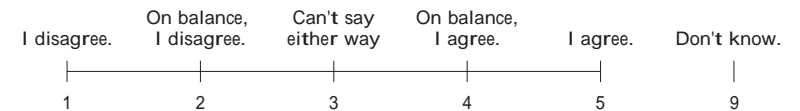
(1) A civil lawsuit achieves fair resolution to a conflict.



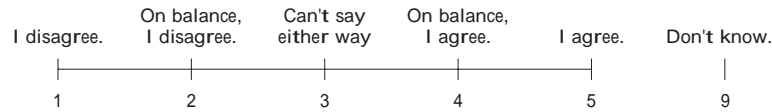
(2) A civil lawsuit can achieve true resolution to a problem.



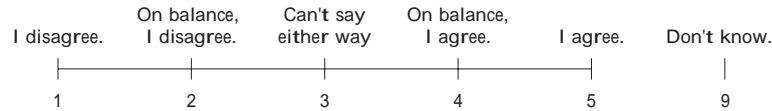
(3) To the extent possible, I don't want to utilize a civil lawsuit.



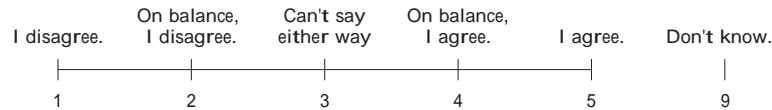
(4) Utilizing a civil lawsuit would make my relationship with the other party worse.



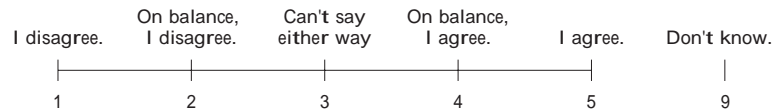
(5) A civil lawsuit requires a lot of money.



(6) A civil lawsuit takes a long time.



(7) A civil lawsuit entails a lot of mental fatigue (stress).



Question 3

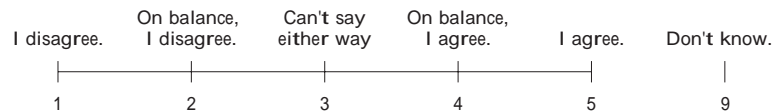
What is your image of lawsuits?

How do you feel with regard to the following three statements ((a) to (c)) ?

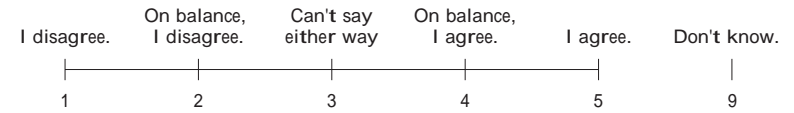
Please choose the single most applicable response.

* Utilize radio-buttons to show choices for the respondent, in accordance with the scale below.

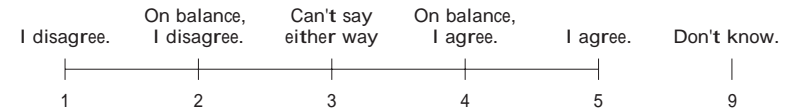
A) I respect judges.



B) I trust the courts.



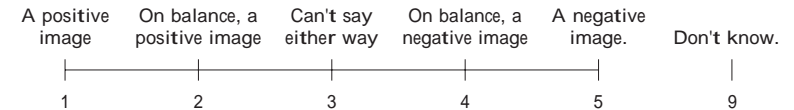
C) The very thought of getting involved in lawsuits somehow scares me.



(2) Do you have a positive image of lawsuits, or a negative image of lawsuits?

Please choose the single most applicable response.

* Utilize radio-buttons to show choices for the respondent, in accordance with the scale below.

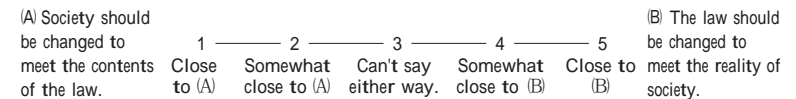


Question 4

In this question, we ask you your opinion about law and lawsuits.

* Utilize radio-buttons to show choices for the respondent, in accordance with the scale below.

(1) Which is closest to your opinion about the relationship between law and society, View (A) or View (B)? Please choose the single most applicable response.



(2) Which is closest to your opinion about the way courts should make their decisions, View (A) or View (B) ? Please choose the single most applicable

response.

(A) Courts should make decisions in accordance with what is written in laws.	1 ——— 2 ——— 3 ——— 4 ——— 5	(B) Courts should make decisions flexibly, with regard to the actual circumstances of cases.
Close to (A)	Somewhat close to (A)	Can't say either way.
	Somewhat close to (B)	Close to (B)

(3) Which is closest to your opinion regarding whether we should obey law,

View (A) or View (B) ? Please choose the single most applicable response.

(A) We must certainly obey the law because it is the law.	1 ——— 2 ——— 3 ——— 4 ——— 5	(B) We need not obey the law if it does not meet the real situation.
Close to (A)	Somewhat close to (A)	Can't say either way.
	Somewhat close to (B)	Close to (B)

From here on, we ask your views about concrete cases.

Question 5

Please read about the following incident involving a loan and answer the questions.

One of your friends has a cousin who has been out of employment and has just been promised a new job. The cousin made the following request to your friend.

The cousin: "While out of employment, I have borrowed substantial amounts of money from consumer loan companies (loan sharks) . I can pay back so little money each month that the amount of interest keeps increasing month by month. For that reason, I would like to pay back the remaining principal and interest entirely. Could you do me the favor of lending me 1,500,000 yen?"

Your friend lent the cousin 1,500,000 yen without interest, on the promise that the cousin would "pay it back over a two and a half year period, beginning in six months, at 50,000 yen a month." It has been one year since your friend lent the cousin the money, but there is no sign of the cousin paying back the money.

(1) Do you think it is better for your friend to consult a lawyer, or not? Please choose the single most applicable response.

Better not to consult a lawyer	On balance, better not to consult a lawyer	Can't say either way.	On balance, better to consult a lawyer.	Better to consult a lawyer.	Don't know.
1	2	3	4	5	9

(2) If your friend does consult a lawyer, do you think it is better for your friend to consult a male lawyer or a female lawyer? Please choose the single most applicable response.

Better to consult a male lawyer.	On balance, better to consult a male lawyer	Can't say either way.	On balance, better to consult a female lawyer.	Better to consult a female lawyer.	Don't know.
1	2	3	4	5	9

(3) Do you think it is better for your friend to go to court or not? Please choose the single most applicable response.

A) Do you think it is better for your friend to file for conciliation or not?

Better not to file for conciliation.	On balance, better not to file for conciliation	Can't say either way.	On balance, better to file for conciliation	Better to file for conciliation	Don't know.
1	2	3	4	5	9

B) Do you think it is better for your friend to file a civil lawsuit or not?

Better not to file a civil lawsuit.	On balance, better not to file a civil lawsuit.	Can't say either way.	On balance, better to file a civil lawsuit.	Better to file a civil lawsuit.	Don't know.
1	2	3	4	5	9

(4) Do you think it is better for your friend to talk to the police about this matter? Please choose the single most applicable response.

Better not to talk to the police.	On balance, better not to talk to the police.	Can't say either way.	On balance, better to talk to the police.	Better to talk to the police.	Don't know.
1	2	3	4	5	9

This incident continues as follows. Please read about subsequent developments and answer the questions.

Later on, your friend asked a lawyer to file a civil lawsuit against the cousin. At trial, the cousin contested the case, saying, "I don't recall borrowing any money at all."
 Near the end of the trial, the judge recommended both parties to settle the case. At that time, your friend's lawyer said, "Since we have insufficient evidence to prove you lent the money, we may lose this case."
 Your friend settled the case on the condition that a relative would pay your friend 200,000 yen in cash immediately

(5) Which is the closest to your opinion about the statement "we may lose the case because of insufficient evidence," View (A) or View (B)? Please choose the single most applicable response.

<p>(A) It is wrong that your friend, who actually loaned the money, should lose just because of lack of evidence.</p>	<p>(B) If your friend does not have evidence, losing the case cannot be helped.</p>
---	---

1 ——— 2 ——— 3 ——— 4 ——— 5

Close to (A) Somewhat close to (A) Can't say either way. Somewhat close to (B) Close to (B)

(6) What do you think about the outcome of your friend's case? Please choose the single most applicable response.

A) Do you consider the outcome fair or unfair?

It is an unfair outcome.	On balance, it is an unfair outcome.	Can't say either way.	On balance, it is a fair outcome.	It is a fair outcome.	Don't know.
1	2	3	4	5	9

B) Do you consider the outcome acceptable or unacceptable?

It is an unacceptable outcome.	On balance, it is an unacceptable outcome.	Can't say either way.	On balance, it is an acceptable outcome.	It is an acceptable outcome.	Don't know.
1	2	3	4	5	9

Question 6

Please read about the following incident involving a fight and answer the questions.

Mr. A, who is one of your close relatives, got into a quarrel with Mr. B, a male office worker, after they nearly ran into each other on the subway platform. In a one-sided fashion, Mr. B hit Mr. A with his fist, causing serious injury.
 It was Mr. B who caused the near collision by rushing out of a departing subway train at the last moment.
 However, Mr. B insists that it was Mr. A's fault and has not given him an apology nor any compensation.

(1) Do you think it is better for Mr. A, who was struck, to consult a lawyer, or not? Please choose the single most applicable response.

Better not to consult a lawyer	On balance, better not to consult a lawyer	Can't say either way.	On balance, better to consult a lawyer.	Better to consult a lawyer.	Don't know.
1	2	3	4	5	9

(2) If Mr. A does consult a lawyer, do you think it is better for him to consult a male lawyer or a female lawyer? Please choose the single most applicable response.

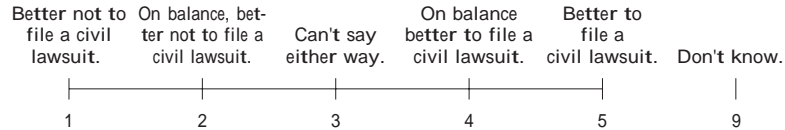
Better to consult a male lawyer.	On balance, better to consult a male lawyer	Can't say either way.	On balance, better to consult a female lawyer.	Better to consult a female lawyer.	Don't know.
1	2	3	4	5	9

(3) Do you think it is better for Mr. A, who was struck, to go to court or not? Please choose the single most applicable response.

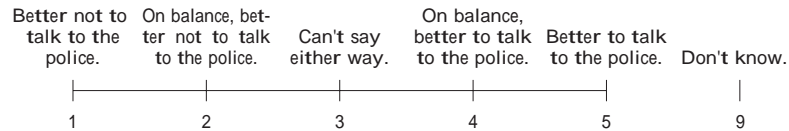
A) Do you think it is better for him to file for conciliation or not?

Better not to file for conciliation.	On balance, better not to file for conciliation	Can't say either way.	On balance, better to file for conciliation	Better to file for conciliation	Don't know.
1	2	3	4	5	9

B) Do you think it is better for him to file a civil lawsuit or not?



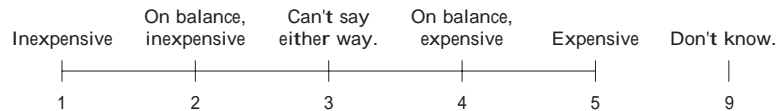
(4) Do you think it is better for Mr. A, who was struck, to talk to the police about this matter? Please choose the single most applicable response.



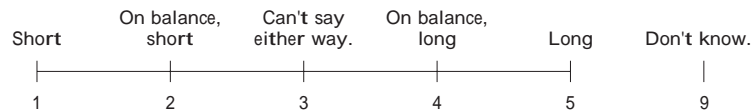
This incident continues as following. Please read about subsequent developments and answer the questions.

Mr. A, who was struck, asked a lawyer to file a civil lawsuit against Mr. B and claimed 3,000,000 yen as compensation for his damages (medical costs and mental damages).
 The trial took 1 year and resulted in a 2,000,000 yen judgment in Mr. A's favor. Soon after the judgment Mr. B paid him the 2,000,000 yen in full. Mr. A's expenses, for lawyer fees, court fees, and the like, came to 500,000 yen.

(1) Do you think the 500,000 yen it cost Mr. A for the case was inexpensive or expensive?

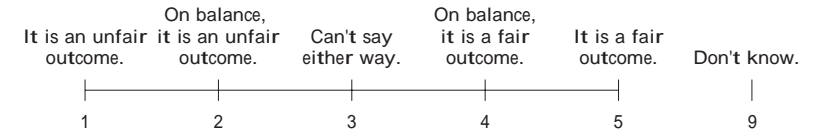


(2) Do you think the 1 year period of time it took for the trial in this case was short or long?

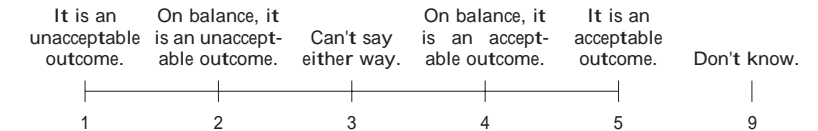


(3) What do you think about the outcome of Mr. A's case? Please choose the single most applicable response.

A) Do you consider the outcome fair or unfair?



B) Do you consider the outcome acceptable or unacceptable?



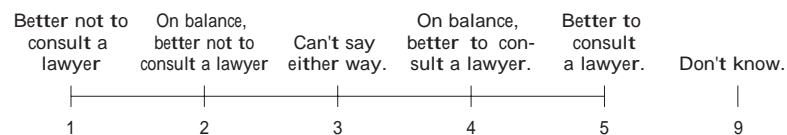
Question 7

Please read about the following incident involving family problem and answer the questions.

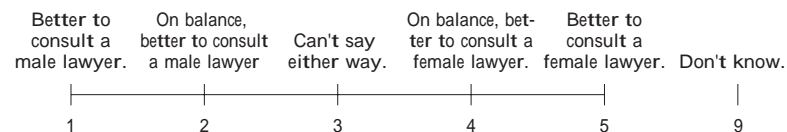
Mrs. C, a female friend of yours, has been married to Mr. C for 10 years. They both have jobs and they live together with their 8-year old son. For the past year or so, Mrs. C has been telling you about her troubles. When Mr. C gets drunk he sometimes commits acts of violence, and your friend Mrs. C has been distressed by this. About a year ago, it seems that Mr. C began to feel more frustrated about his job than before, and he began drinking heavily every night. He often struck Mrs. C and swore at her. On several occasions, Mrs. C, your friend, suffered bruises that lasted for about a week. A half-year ago, Mr. C went into a drunken rage and started throwing dishes all over. Mrs. C took her son and left, and sought refuge at her parents' house. Mr. C apologized, and, after about a week, Mrs. C returned to their house.. Thereafter Mr. C refrained from drinking and as a result there were no acts of violence for a while, but about a month ago he again began to

drink and commit acts of violence. Mrs. C again has taken refuge, together with her son, at her parents' house.
 Your friend Mrs. C phoned Mr. C, saying: "I want a divorce from you and I want to raise our son myself. I would like you to pay the child-rearing expenses."
 Over the phone, Mr. C apologized and asked Mrs. C to come back with their son.

(1) Do you think it is better for Mrs. C to consult a lawyer or not? Please choose the single most applicable response.

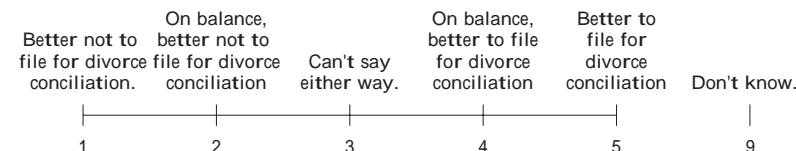


(2) If she does consult a lawyer, do you think it is better for Mrs. C to consult a male lawyer or a female lawyer? Please choose the single most applicable response.



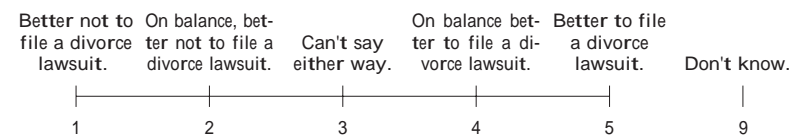
(3) In Japan, if one member of a married couple wishes divorce and the other refuses divorce by consent, they will go through a divorce conciliation at a Family Court. If they cannot reach any agreement at the divorce conciliation, they will try the case in a divorce lawsuit. Do you think it is better for Mrs. C to go to court or not? Please choose the single most applicable response.

A) Do you think it is better for her to file for divorce conciliation or not?

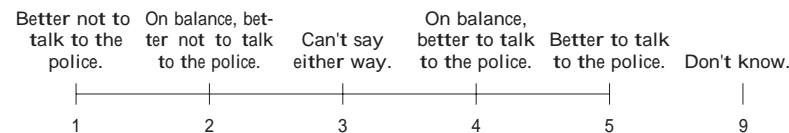


* For respondents who choose 4 or 5 in previous question, proceed to the next question B) .

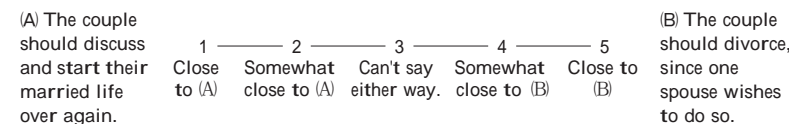
B) If they cannot reach consent on divorce in the divorce conciliation, do you think it is better for Mrs. C to file a divorce lawsuit or not??



(5) Do you think it is better for Mrs. C to talk to the police about this matter? Please choose the single most applicable response.



(6) With regard to the trouble between Mr. and Mrs. C, which of the following two opinions do you agree with, View (A) or View (B) ? Please choose the single most applicable response.

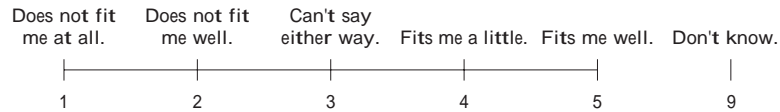


From here on, we ask you about yourself.

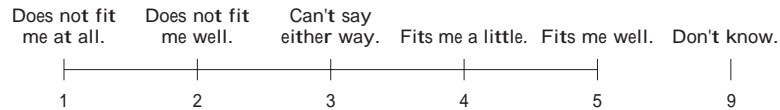
Question 8

How well does each of following statements (1) to (5) fit you? Please choose the single most applicable response.

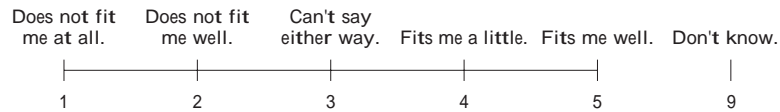
(1) I don't hesitate to insist on my own rights.



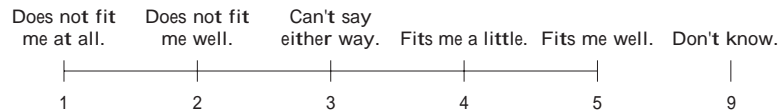
(2) I often disagree with others.



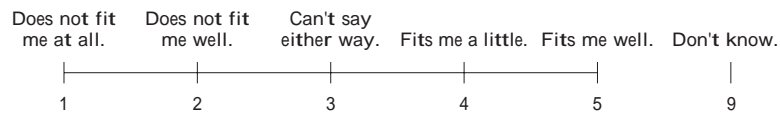
(3) No one seeks to make me suffer.



(4) I often meet people I don't like.



(5) When I disagree with others, I cannot help arguing with them.

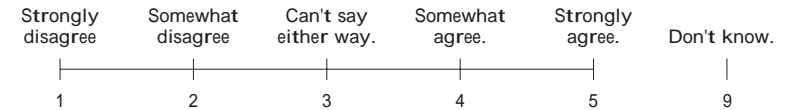


Question 9

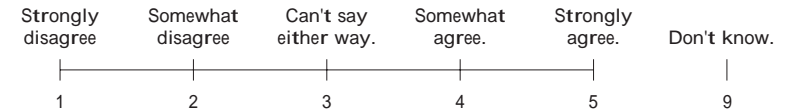
People say various things about differences between men and women. Do you agree or disagree with the following statements(1) to (5). Please choose the

single most applicable response.

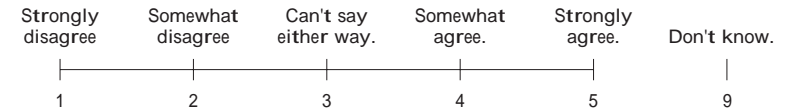
(1) Tea tastes better if a woman makes it.



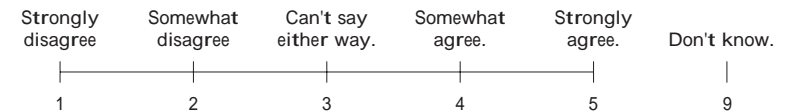
(2) Men should be tall.



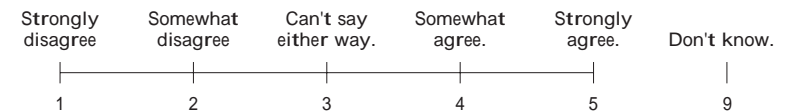
(3) Women are more emotional than men.



(4) Women cannot be treated on an equal footing with men with regard to work, because there is a possibility women will give birth.



(5) Men are more aggressive than women.



F 1 The next inquiries relate to your current occupation and your job responsibilities.

(1) What is your current occupation? Please choose the single most applicable response.

- 1 Self-employed, related to agriculture or fisheries (manager or employee)
- 2 Self-employed, related to commerce or manufacturing (manager or

employee)

3 Self-employed, other (manager or employee)

(Please explain :)

4 Managerial employee (company, bureaucracy, store, etc.)

5 Sales-related employee (company, bureaucracy, store, etc.)

6 Technical employee (company, bureaucracy, store, etc.)

7 Laborer employee (company, bureaucracy, store, etc.)

8 Clerical employee (company, bureaucracy, store, etc.)

9 Teacher

10 Professional (doctor, lawyer, etc.)

11 Part-time worker

12 Full-time homemaker

13 Student

14 Unemployed

15 Other (Please explain:)

(2) Have you ever had work experience involving legal matters?

1 You have had direct work experience relating to legal matters, such as in a legal department

2 You have had experience that involved law, in connection with your regular work in such fields as business, sales, manufacturing, etc.

3 You have not had experience involving legal matters in connection with your work

4 NA

F 2 Please tell us the highest educational level you have completed (including the current level, for those still in school). Please choose the single most applicable response. (Please do not include trade schools.)

1 No educational level completed

2 Elementary school or junior high school (including elementary school under the old system)

3 High school (including junior high school under the old system; industrial, commercial, or agricultural school under the old system; and girls' high school)

4 Junior college, higher vocational school

5 College (including high school under the old system; higher vocational school under the old system; and normal school)

6 Graduate school

7 NA

F 3 Are you currently studying law or have you studied law in the past?

Please choose the single most applicable response.

1 You have studied law in the law faculty of a university with a program in law or at a graduate program in law

2 You have studied law in a faculty other than law or a graduate program other than in law

3 You have studied law elsewhere than in a university (including self-study)

4 You have not studied law

5 NA

F 4 Including you yourself, how many family members are living together in your household? Please choose the single most applicable response.

1 One (myself alone) 4 Four

2 Two 5 Five

3 Three 6 Six or more (Please specify how many:)

F 5 What is the total household net worth (the total amount, as calculated in monetary terms, of fixed assets, such as land and buildings; deposits; and shares; etc., reduced by the amount due on loans) of the family members who

are living together (if you are living on your own, your net worth alone) ?

Please choose the single most applicable response.

- | | |
|---|--|
| 1 Under 10,000,000 yen | 4 Between 50,000,000 and 70,000,000 yen |
| 2 Between 10,000,000 and 30,000,000 yen | 5 Between 70,000,000 and 100,000,000 yen |
| 3 Between 30,000,000 and 50,000,000 yen | 6 Over 100,000,000 yen |

[Notes]

- 1 Here I show one of twelve variations of our internet questionnaires for reference.
- 2 This is an instruction to the programmers. Our instructions to the programmers are marked with * and they were originally written in red.

The Lawyer-Client Relationship in Civil Litigation Mutual Understanding or Misunderstanding?

Shozo OTA

[Abstract]

We analyzed the lawyer-client relationship in civil litigation using the empirical data we gathered through our nation-wide survey of court files, civil litigants, and their lawyers. We investigated the factors considered by litigants and their lawyers in deciding whether to sue or to deny the claim, the litigants' assessment of their lawyers' accuracy in the initial case evaluation, the assessment of achievement vis-à-vis the initial case evaluation, the customer satisfaction of litigants with regards to their lawyers as well as the lawyers' assessment of their clients' satisfaction, the division of labor in initiating litigation or in denying the plaintiff's claim, in legal construction, and in evidence gathering.

[Keywords]

civil litigation, lawyer-client relationship, interaction between litigant and lawyer, principal-agent relationship, division of labor, initiative distribution

Introduction

The lawyer-client relationship is one of the typical principal-agent relationships, where the agent has independent (private) interests different from those of the principal, and these differing interests cause the agent's incentive to deviate from the principal's best interest. The lawyer-client relationship has, however,

some unique features that make it atypical to the principal-agent relationship, namely, (a) a lawyer and his/her client share a common objective in winning the case, which is obvious to both of the lawyer and the client in the case of a judgment being rendered (although it is not so clear in the case of a settlement); and (b) a lawyer and his/her client have an incentive to cooperate because of the unique bilateral asymmetry of information, i.e., a lawyer has overwhelming information on the law whereas his/her client has overwhelming information on the facts and evidence. The lawyer and the client need to cooperate if they want to win the case. These features lead to the necessity of communication and mutual understanding between a lawyer and his/her client.

By using the data collected by our survey of civil litigants and their lawyers, this paper empirically examines if the mutual understanding between a lawyer and his/her client has materialized or if there are misunderstandings between them. The data used were obtained from (a) litigants who were represented by lawyers, and (b) their respective lawyers.

1. Decision to Sue or to Deny the Claim: Factors of Consideration

At the initial stage when prospective plaintiffs decide whether or not to sue and when the defendants then decide whether or not to deny the claim, the potential litigants have a number of factors to consider. We asked the litigants what factors they considered at this initial stage, and we also asked their lawyers about what they thought their clients were worried about in addition to what the lawyers themselves considered at that stage.

1. 1. Litigant Survey

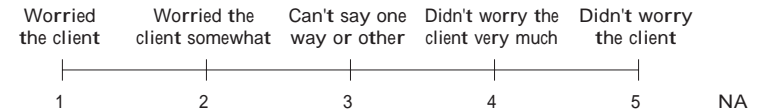
The questions we asked are as follows:

Question 14 At the time you filed the lawsuit/decided to refuse the plaintiff's claim, to what extent did the items below worry you? Please answer with

respect to each of the following items in terms of degree. With respect to each of the items, please choose the single most applicable response.

- (1) The cost of the lawsuit
- (2) The time the lawsuit would take
- (3) Prospects of winning the lawsuit
- (4) The possibility the other side would not comply even if you won the lawsuit
- (5) How family members, those at your workplace, or neighbors would react
- (6) The possibility the lawsuit would result in trouble for family members, those at your workplace, or neighbors

[common scale for answers]



We asked the respondents to answer from the 5 degree scale, i.e., 1: Worried you, 2: Worried you somewhat, 3: Can't say one way or other, 4: Didn't worry you very much, 5: Didn't worry you, which is shown above. The results are as follows:

Table 1

		(1) The cost of the lawsuit ^(*)	(2) The time the lawsuit would take	(3) Prospects of winning the lawsuit ^(*)	(4) The possibility the other side would not comply even if you won the lawsuit ^(*)	(5) How family members, those at your workplace, or neighbors would react ^(*)	(6) The possibility the lawsuit would result in trouble for family members, those at your workplace, or neighbors ^(*)
Plaintiffs (Represented)	Mean	1.96	1.88	1.88	2.26	3.25	3.40
	N	235	233	230	218	216	225
Defendants (Represented)	Mean	2.11	1.98	1.96	2.49	3.00	3.12
	N	123	126	123	117	110	118

(*) : Statistically significant by 1% between means of plaintiffs and defendants.

The plaintiffs and the defendants were quite seriously worried about factors (1) [litigation costs], (2) [litigation time] and (3) [win/lose], while they were only slightly worried about factor (4) [compliance by the other side]. The factors (5) [reaction of family members, etc.] and (6) [trouble for family members, etc.] did not worry the litigants. In all factors, except (2) [the time the lawsuit would take], the differences of means are statistically significant, i.e., factors (1), (3), and (4) worried the plaintiffs more than it did the defendants, and factors (5) and (6) worried the plaintiffs less than it did the defendants. In short, the plaintiffs and the defendants were both similarly seriously worried about "the time the lawsuit would take"; although both the plaintiffs and the defendants were seriously concerned about the costs of the lawsuit and the prospects of winning/losing the lawsuit, these factors appeared to worry the plaintiffs more than it did the defendants; the remaining factors (4), (5), and (6) were not overly concerning to either of the litigants.

1. 2. Lawyers' Worry and Lawyers' Understanding about Clients' Worry

To what extent were the lawyers themselves worried about these factors? Moreover to what extent do the lawyers accurately understand the concerns of their clients? We asked the representing lawyers the same questions as the litigants in 1.1 above. The question is as follows:

Question 10 To what extent do you feel that your client, as of the time of filing the lawsuit, was worried about the following items? In the event there were multiple clients, please choose one principal client and answer with respect to that client. With respect to each item, please choose the single most applicable response.

- (1) The cost of the lawsuit
- (2) The time the lawsuit would take
- (3) Prospects of winning the lawsuit
- (4) The possibility the anticipated judgment or settlement would not be

performed

- (5) How the client's family members, those at the client's workplace, or the client's neighbors would react
- (6) The possibility the lawsuit would result in trouble for the client's family members, those at the client's workplace, or the client's neighbors

We also asked the lawyers to answer from the 5 degree scale, i.e., 1: Worried the client, 2: Worried the client somewhat, 3: Can't say one way or other, 4: Didn't worry the client very much, 5: Didn't worry the client. At the same time we asked the representing lawyers about their own concerns. The question is as follows:

(3) At the time of filing the lawsuit, to what extent did the following items worry you? With respect to each item, please choose the single most applicable response.

- (1) The cost of the lawsuit
- (2) The time the lawsuit would take
- (3) Prospects of winning the lawsuit
- (4) The possibility the anticipated judgment or settlement would not be performed
- (5) How the client's family members, those at the client's workplace, or the client's neighbors would react
- (6) The possibility the lawsuit would result in trouble for the client's family members, those at the client's workplace, or the client's neighbors

We used the same 5 degree scale measure. The results of the plaintiffs' side are as follows. We compare the answers by plaintiff lawyers to those of plaintiffs themselves.

As is shown in Table 2 and Table 3, in all factors the plaintiffs were more seriously worried than their lawyers, and the plaintiffs were more worried than their lawyer's estimate (empathy) of their clients' worry. As shown by the asterisks for factor (1), (2), and (4) in Table 2, the plaintiffs are worried about

Table 2

		N	Mean	p
(1) The cost of the lawsuit	Plaintiffs	235	1.96 ^(*)	0.000
	Plaintiff Lawyers (themselves)	201	3.56 ^(*)	
(2) The time the lawsuit would take	Plaintiffs	233	1.88 ^(*)	0.000
	Plaintiff Lawyers (themselves)	203	3.24 ^(*)	
(3) Prospects of winning the lawsuit	Plaintiffs	230	1.88	0.000
	Plaintiff Lawyers (themselves)	203	2.70	
(4) The possibility the anticipated judgment or settlement would not be performed	Plaintiffs	218	2.26 ^(*)	0.000
	Plaintiff Lawyers (themselves)	202	3.20 ^(*)	
(5) How the client's family members, those at the client's workplace, or the client's neighbors would react	Plaintiffs	216	3.25	0.000
	Plaintiff Lawyers (themselves)	192	4.35	
(6) The possibility the lawsuit would result in trouble for the client's family members, those at the client's workplace, or the client's neighbors	Plaintiffs	225	3.40	0.000
	Plaintiff Lawyers (themselves)	197	4.57	

these factors while the lawyers are not. As shown by the asterisks at factor (4) in Table 3, the plaintiffs are worried about the factor (4) while the lawyers do not think that the clients worry. In short, the plaintiff lawyers tend to underestimate the clients' worry.

The results of the defendants' side are as follows.

As is shown in Table 4 and Table 5, in all factors, except (3) [Prospects of winning the lawsuit] in Table 5, the defendants were more seriously worried than their lawyers and the defendants were more worried than their lawyer's estimate (empathy) of their clients' worry. As shown by the asterisks at factors (1), (2), and (4) in Table 4, the defendants are worried about these factors while the lawyers are not. As shown by the asterisks at factors (1), (2), and (4) in Table 5, the defendants are worried about the factor (4) while the lawyers do not think that the clients are worried. In short, the defendant lawyers tend to underestimate the clients' worry.

Table 3

		N	Mean	p
(1) The cost of the lawsuit	Plaintiffs	235	1.96	0.000
	Plaintiff Lawyer's Empathy	202	2.59	
(2) The time the lawsuit would take	Plaintiffs	233	1.88	0.000
	Plaintiff Lawyer's Empathy	203	2.69	
(3) Prospects of winning the lawsuit	Plaintiffs	230	1.88	0.000
	Plaintiff Lawyer's Empathy	203	2.10	
(4) The possibility the anticipated judgment or settlement would not be performed	Plaintiffs	218	2.26 ^(*)	0.000
	Plaintiff Lawyer's Empathy	201	3.14 ^(*)	
(5) How the client's family members, those at the client's workplace, or the client's neighbors would react	Plaintiffs	216	3.25	0.000
	Plaintiff Lawyer's Empathy	184	4.14	
(6) The possibility the lawsuit would result in trouble for the client's family members, those at the client's workplace, or the client's neighbors	Plaintiffs	225	3.40	0.000
	Plaintiff Lawyer's Empathy	190	4.31	

(*): Plaintiffs' Mean < 3.0 < Plaintiff's Lawyers.

Table 4

		N	Mean	p
(1) The cost of the lawsuit	Defendants	123	2.11 ^(*)	0.000
	Defendant Lawyers (themselves)	105	3.75 ^(*)	
(2) The time the lawsuit would take	Defendants	126	1.98 ^(*)	0.000
	Defendant Lawyers (themselves)	105	3.35 ^(*)	
(3) Prospects of winning the lawsuit	Defendants	123	1.96	0.000
	Defendant Lawyers (themselves)	106	2.62	
(4) The possibility the anticipated judgment or settlement would not be performed	Defendants	117	2.49 ^(*)	0.000
	Defendant Lawyers (themselves)	103	3.78 ^(*)	
(5) How the client's family members, those at the client's workplace, or the client's neighbors would react	Defendants	110	3.00	0.000
	Defendant Lawyers (themselves)	102	4.19	
(6) The possibility the lawsuit would result in trouble for the client's family members, those at the client's workplace, or the client's neighbors	Defendants	118	3.12	0.000
	Defendant Lawyers (themselves)	100	4.58	

Table 5

		N	Mean	p
(1) The cost of the lawsuit	Defendants	123	2.11 ^(*)	0.000
	Defendant Lawyer's Empathy	104	3.08 ^(*)	
(2) The time the lawsuit would take	Defendants	126	1.98 ^(*)	0.000
	Defendant Lawyer's Empathy	105	3.02 ^(*)	
(3) Prospects of winning the lawsuit	Defendants	123	1.96	0.206
	Defendant Lawyer's Empathy	106	2.18	
(4) The possibility the anticipated judgment or settlement would not be performed	Defendants	117	2.49 ^(*)	0.000
	Defendant Lawyer's Empathy	100	3.60 ^(*)	
(5) How the client's family members, those at the client's workplace, or the client's neighbors would react	Defendants	110	3.00	0.001
	Defendant Lawyer's Empathy	96	3.74	
(6) The possibility the lawsuit would result in trouble for the client's family members, those at the client's workplace, or the client's neighbors	Defendants	118	3.12	0.000
	Defendant Lawyer's Empathy	99	4.00	

The data shows that lawyers for both the plaintiff and defendant tend not to fully appreciate the clients' worry regarding litigation.

2. Achievement Assessment

2. 1. Litigants' Assessment of Achievement

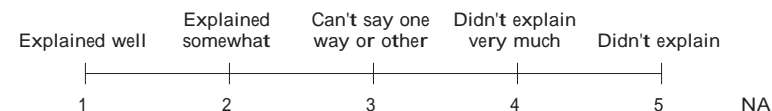
Civil litigants and their lawyers share a common objective, i.e., winning the case, but there are a wide variety of cases, from strong cases certain to win to weak cases certain to lose. Then the common objective should be not just winning the case but achieving the best results. The reference point used to define "best result" is the initial estimate of the strength of the case.

In order to measure the achievement assessment by litigants and lawyers, we asked the litigants the following questions.

Question 16 To what extent did your lawyer explain the following matters to

you? In the event two or more lawyers handled the case, please answer with respect to the principal lawyer. With respect to each item, please choose the single most applicable response.

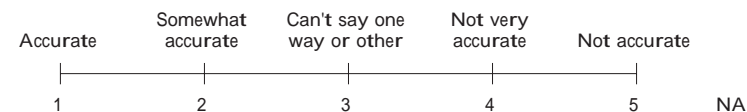
(1) Prospects for the lawsuit



Question 17 Looking back on the results of the trial at the District Court level,

to what extent were the outlooks of your lawyer accurate? In the event two or more lawyers handled the case, please answer with respect to the principal lawyer. With respect to each item, please choose the single most applicable response.

(3) Outlook regarding prospects for winning



The overwhelming majority of respondents answered Question 16 (1) as either "Explained well" or "Explained somewhat," (specifically, 76.4% of plaintiffs and 78.9% of defendants). Question 17 (3) asks for the litigants' assessment of their lawyers' accuracy in the initial case evaluation. Although it is certainly possible that "Not accurate" means overachievement vis-à-vis the initial case evaluation, "Not accurate" usually means the litigants' disappointment, i.e., underachievement. The results are shown in Table 6.

Table 6: Outlook Regarding Prospects of Winning

	N	Mean
Plaintiffs (represented)	2.47	214
Defendants (represented)	2.62	114
F-value	1.14	
p	0.29	

There is no statistically significant difference between the plaintiffs and the defendants. The litigants' assessment of their lawyers' accuracy in the initial case evaluation is rather lukewarm. If we translate these answers to mean the litigants' achievement assessment vis-à-vis initial prospects, the assessment is not very positive (such as "Fair" in the "Excellent--Very good--Good--Fair---Poor--Fail" scale).

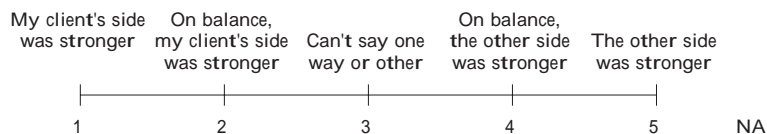
There is a positive correlation between Q16 (1) and Q17 (3), which means that the more the lawyers explain the prospects for the lawsuits, the more accurate the litigants evaluate their lawyers' case evaluation ($r=0.373$ and $p<0.01$ for the plaintiffs, $r=0.469$ and $p<0.01$ for the defendants).

2. 2. Lawyers' Assessment of Achievement

We asked the following questions to measure the lawyers' assessment of achievement.

Question 7 We next inquire with regard to your views on the outlook for the litigation at the time you were asked to handle this case.

- (1) At the time you were asked to handle this case, which side did you feel was in the stronger position? Please choose the single most applicable response.



- (2) Reflecting on your views on the outlook for the litigation at the outset, to what extent did the results of the trial in the first instance achieve those views? Please answer in terms of percentage.

_____ percent achieved

The results are shown in Table 7. The plaintiffs' lawyers evaluate their clients' cases stronger than the opponents (defendants), while the defendants' lawyers

Table 7: Case Evaluation by Lawyers

	N	Mean
Plaintiff Lawyers	207	2.15
Defendant Lawyers	108	3.11
F-value	47.08	
p	0.00	
Plaintiff Lawyers	N	200
	Mean	73.66
Defendant Lawyers	N	102
	Mean	73.14

evaluate their clients' cases slightly weaker than the opponents (plaintiffs). The assessment of their achievement vis-à-vis their initial case evaluation of the plaintiff lawyers and those of the defendant lawyers are almost identical at 73%.

Although there is no scientific method to compare the litigants' achievement assessments in 2.1 and these results on lawyers here, a 73% achievement sounds much higher than the litigants' "Fair" evaluation.

3. Customer Satisfaction

3. 1. Litigant Satisfaction

If and to what extent are the litigants satisfied with their lawyers' performance? This is the most important issue in the lawyer-client relationship. We asked the litigants the following question.

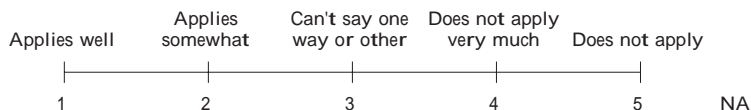
Question 22 To what extent do the following evaluations apply to the lawyer who actually worked on your case? In the event two or more lawyers actually worked on the case, please answer with respect to the principal lawyer. With respect to each item, please choose the single most applicable response.

- (1) Understood the substance and background of the case well
- (2) Sincerely sought to understand your feelings
- (3) Explained the legal aspects of the case in an easy-to-understand fashion

(4) Gave thought to a good resolution of the dispute for all parties, including the other side

(5) Took into consideration family members or other concerned persons who were not parties to the lawsuit

[Answers to (1)-(5) used the following scale]



The results are shown in Table 8. We did not find any statistically significant differences between the plaintiffs and the defendants in any of the questions. Although the litigants evaluate their lawyers relatively well on questions (1) [understanding the case], (2) [understanding the client's feelings], and (3) [explanation of the legal aspects], they gave a rather lukewarm evaluation on questions (4) [good resolution for all parties] and (5) [considering nonparties].

We further asked the following question to measure the litigants' overall satisfaction.

Question 23 What is your overall evaluation of the lawyer who actually worked on your case? With respect to each of the items below, please choose the single most applicable response. In the event two or more lawyers actually worked on the case, please answer with respect to the principal lawyer.

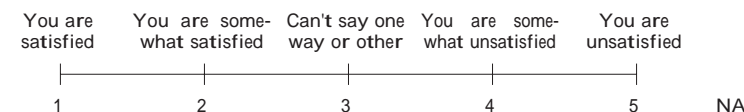
Table 8

		(1) Understood the substance and background of the case well	(2) Sincerely sought to understand your feelings	(3) Explained the legal aspects of the case in an easy-to-understand fashion	(4) Gave thought to a good resolution of the dispute for all parties, including the other side	(5) Took into consideration family members or other concerned persons who were not parties to the lawsuit
Plaintiffs (represented)	N	225	227	224	211	186
	Mean	1.95	2.10	2.21	2.39	2.67
Defendants (represented)	N	120	122	119	116	113
	Mean	1.99	2.11	2.26	2.50	2.59

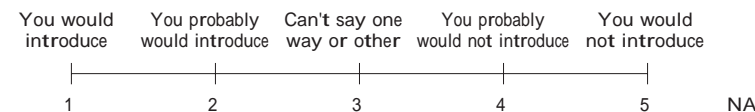
Table 9

		Overall Satisfaction	Introduce the Lawyer to Friends/Relatives
Plaintiffs (represented)	N	230	223
	Mean	2.27	2.66
Defendants (represented)	N	123	116
	Mean	2.24	2.53

(1) Are you satisfied with the lawyer? Please choose the single most applicable response.



(2) If a friend or relative asked you to introduce a lawyer, would you introduce that lawyer? Please choose the single most applicable response.



The results are shown in Table 9. There is no statistically significant difference between the plaintiffs and the defendants. The litigants are relatively satisfied with their lawyers. As to question (2), the litigants are lukewarm at best with regard to introducing their lawyers to friends or relatives.

3. 2. Lawyers Assessment of Client Satisfaction

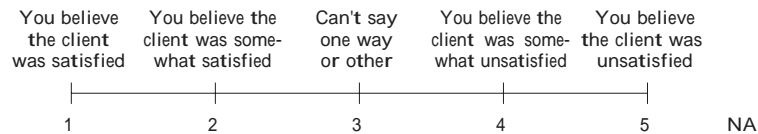
We asked the lawyers the following questions in order to measure their estimate of their clients' satisfaction.

Question 15 We next inquire with regard to your relationship with the client.

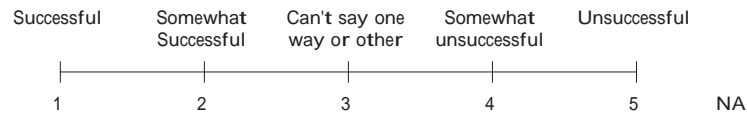
(1) Overall, to what extent do you believe your client was satisfied with your work on the trial in the first instance? In the event there were multiple clients, please choose one principal client and answer with respect to that client. Please choose the single most applicable response.

Table 10

		Q15_1. Client Satisfaction Assessment	Q15_2. Establishing Trust Relationship
Plaintiff Lawyers	N	199	201
	Mean	1.85	1.76
Defendant Lawyers	N	107	108
	Mean	1.75	1.61



(2) To what extent were you successful in establishing a relationship of trust with the client? Please choose the single most applicable response.



The results are shown in Table 10. We did not find any statistically significant differences between the plaintiff lawyers and the defendant lawyers. As to their clients' satisfaction, lawyers are very confident that their clients were satisfied with their performance. The lawyers are also quite confident that they have established relationship of trust with their clients. Compared to the clients' assessment of satisfaction in 3.2 above, lawyers seem to be overconfident.

4. Division of Labor

4. 1. Initiative in Decision to Sue or to Deny the Claim

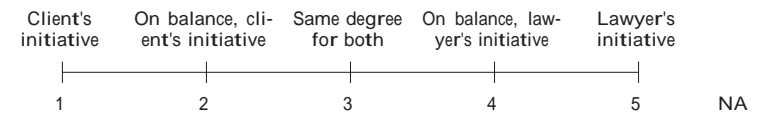
We asked the lawyers the following question in order to measure the division of initiative between a lawyer and his/her client in deciding to sue (plaintiff) or to deny the claim (defendant).

(1) At the time of filing the lawsuit/At the time of filing the response, who

Table 11

		N	%
Plaintiff Lawyers	Client's initiative	37	18.8
	On balance, client's initiative	27	13.7
	Same degree for both	57	28.9
	On balance, lawyer's initiative	40	20.3
	Lawyer's initiative	36	18.3
Defendant Lawyers	Client's initiative	31	29.5
	On balance, client's initiative	13	12.4
	Same degree for both	27	25.7
	On balance, lawyer's initiative	23	21.9
	Lawyer's initiative	11	10.5

took the initiative, you the lawyer or the client? Please answer in terms of degree. In the event there were multiple clients, please choose one principal client and answer with respect to that client. Please choose the single most applicable response.



The mean values are 3.06 for the plaintiff lawyers and 2.71 for the defendant lawyers. The difference is 5% significant ($p=0.038$). The plaintiffs and their lawyers take almost the same degree of initiative, while the defendants take more initiative than their lawyers.

4. 2. Legal Construct Initiative

We asked the lawyers the following question in order to measure the initiative distribution between a lawyer and his/her client in constructing the legal claim. Question 22 How did you decide with respect to legal assertions, claims, and counterarguments? Please choose the single most applicable response.

1 You the lawyer decided almost entirely

Table 12

		N	%
Plaintiff Lawyers	1 You the lawyer decided almost entirely	61	29.5
	2 You primarily decided, in consultation with the client	126	60.9
	3 The client primarily decided, in consultation with you the lawyer	5	2.4
	4 The client decided almost entirely	1	0.5
	5 Other	14	6.8
Defendant Lawyers	1 You the lawyer decided almost entirely	19	17.4
	2 You primarily decided, in consultation with the client	86	78.9
	3 The client primarily decided, in consultation with you the lawyer	2	1.8
	4 The client decided almost entirely	1	0.9
	5 Other	1	0.9

- 2 You primarily decided, in consultation with the client
- 3 The client primarily decided, in consultation with you the lawyer
- 4 The client decided almost entirely
- 5 Other (Please explain:)

The results are shown in Table 12. Decisions on legal matters are predominantly on the lawyer's side, which is not surprising. What is the use of a lawyer if this was not the case?

4. 3. Evidence Gathering Initiative

We asked both the litigants and the lawyers the following questions in order to measure the initiative distribution between a lawyer and his/her client with regard to the evidence gathering.

- (1) [to lawyers] How did you assemble evidence? Please circle all applicable responses.
- 1 You primarily utilized evidence prepared by the client
 - 2 You gave the client detailed instructions and had the client find evidence
 - 3 As lawyer, you yourself found evidence
 - 4 Other (Please explain:)
 - 5 You did not find evidence

Question 33 [to litigants] How did you find evidence/witnesses and investigate the facts? Please circle all responses that apply.

- 1 You investigated the facts and evidence/witnesses based on your own judgment
- 2 You investigated the facts and evidence/witnesses yourself, based on instructions from the lawyer (s)
- 3 The lawyer (s) investigated the facts and evidence/witnesses for you
- 4 You did not investigate the facts and evidence/witnesses
- 5 N/A

The results are shown in Table 13 and Table 14. The initiative in evidence gathering is primarily on the clients' side.

Table 13 Lawyers' Answers

		N	%
1 You primarily utilized evidence prepared by the client	Plaintiff Lawyers	97	45.97
	Defendant Lawyers	35	30.97
2 You gave the client detailed instructions and had the client find evidence	Plaintiff Lawyers	116	54.98
	Defendant Lawyers	66	58.41
3 As lawyer, you yourself found evidence	Plaintiff Lawyers	85	40.28
	Defendant Lawyers	31	27.43
4 Other	Plaintiff Lawyers	12	5.69
	Defendant Lawyers	6	5.31
5 You did not find evidence	Plaintiff Lawyers	2	0.95
	Defendant Lawyers	8	7.08

Table 14 Litigants' Answers

		N	%
1 You investigated the facts and evidence/ witnesses based on your own judgment	Plaintiffs	90	37.04
	Defendants	42	30.66
2 You investigated the facts and evidence/ witnesses yourself, based on instructions from the lawyer (s)	Plaintiffs	79	32.51
	Defendants	57	41.61
3 The lawyer (s) investigated the facts and evidence/witnesses for you	Plaintiffs	47	19.34
	Defendants	10	7.30
4 You did not investigate the facts and evidence/witnesses	Plaintiffs	21	8.64
	Defendants	10	7.30

5. Concluding Remarks

The unique features of the lawyer-client relationship are (a) a lawyer and his/her client share a common objective of winning the case; and (b) a lawyer and his/her client have a unique bilateral asymmetry of information, i.e., a lawyer has overwhelming information on the law whereas his/her client has overwhelming information on the facts and evidence of the case. From this point of view, we can explain the division of initiative and the division of labor between the litigant and his/her lawyer.

As to the factors considered in decision to sue or to deny the claim, we find some discrepancies between the lawyers and the litigants how such factors are prioritized. The data show that both the plaintiff and defendant lawyers' understanding of the clients' worry at the outset of the litigation process tends to be imperfect and that the lawyers tend to underestimate their clients' level of concern.

The litigants' assessment of their lawyers' accuracy in the initial case

evaluation is rather lukewarm. We found that the more the lawyer explains the prospects of the lawsuits, the more accurate the litigant evaluates their lawyer's case evaluation.

As to the lawyers' assessment of their achievement vis-à-vis their initial case evaluation, the response from the plaintiff lawyers and the defendant lawyers are almost identical, i.e., 73%, which appears to be higher than the litigants' evaluation.

As to customer satisfaction, the lawyers are very confident that their clients were satisfied with the services provided. The lawyers are also quite confident that they have established a relationship of trust with their clients. Compared to the clients' assessment of satisfaction with the lawyer performance, lawyers seem to be overconfident.

As to the division of labor in initiating litigation or denying the claim the plaintiff's claim, the plaintiffs and their lawyers take almost the same degree of initiative, while the defendants take more initiative than their lawyers. As to the division of labor in legal construction, the decisions as to legal matters are predominantly made by the lawyers. As to the division of labor in evidence gathering, the initiative is primarily on the clients' side (with lawyer's instruction).

We would like to make caveat at this point with regard to our data and analyses. Due to the low rate of return, we were not able to do the matching between the litigants and the lawyers. Therefore there remains the possibility that our analyses and results may have only heuristic values.