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Do Better Lawyers Win More Often? Measures of Advocate Quality and Their Impact in Singapore's Supreme Court

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Parties to a dispute that goes to court typically seek to retain the best lawyer they can afford. But do the 'best' lawyers get better results? This article surveys the literature across various jurisdictions before introducing a recent study of determinants of litigation outcomes in Singapore. The focus is on whether there is a correlation between various measures of lawyer quality (size of law firm, professional status, years of experience, etc) and actual success in court. Consistent with past studies, larger and better-resourced law firms tend to do better on average — though Singapore is unusual in that the Government Legal Service functions like the largest and best-resourced law firm. Individual lawyers, however, yield unusual results, with more experienced lawyers sometimes having a lower *success rate in court — perhaps due to them taking on more complex cases. The study also shows that women are significantly underrepresented as lead counsel in Singapore, but on average may outperform men.*

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INTRODUCTION

Parties to a dispute that goes to court typically seek to retain the best lawyer they can afford. But do the 'best' lawyers get better results? A fundamental precept of the rule of law is equality before that law. In theory, at least, a lawyer's first duty is to the court and a judge should reach a just outcome regardless of the quality of the arguments put before him or her. In practice, of course, there is a war for talent based on the assumption that the party with more resources often obtains more 'justice'.

Wariness about accepting this commercial reality is evident in the professional conduct rules that restrict lawyers from advertising their skills in general and citing success rates in particular. Academics are spared such

restrictions, however, and the present study examines the impact of lawyer quality on litigation outcomes. (The related field of analysing the performance of judges is more controversial. In 2019, France adopted an extraordinary law prohibiting the publication of data analytics that reveal or predict how particular judges decide on cases. This was, reportedly, an alternative to a proposal that judgments could be published without identifying the judge at all.[1])

A key challenge is that case selection is not neutral. That is, a 'better' lawyer may win more often because he or she chooses better *cases* to bring to court — and declines or settles those with a lesser chance of winning.[2] Nevertheless, it is still interesting to explore whether a case brought by a 'better' lawyer that makes it to court is more likely to be won by that lawyer. In addition, appeals may offer an opportunity to control for selection by having different lawyers argue what is, in essence, the same case. The study therefore seeks to examine whether decisions in which an unsuccessful litigant appeals while 'upgrading' to a more expensive and/or qualified lawyer are more likely to succeed than if the lawyer remains the same or if the client 'downgrades'.

Another preliminary objection might be that every case is different and its resolution ultimately depends on the merits. For each individual case that should, of course, be true. Given a large enough sample, however, the aim of the study is to look for correlations between lawyer quality and litigation outcomes. Full explanations of such correlations may ultimately require a mixed method approach that could include surveys of clients, lawyers, and judges; it may also lead to case studies of specific areas of law.

The article first sets the legal context. This is important because the formal position of most common law systems is that lawyer quality should *not* matter. Nonetheless, various studies considered in Part II suggest that this formal position is mistaken and that certain qualities — most notably resources and experience — correlate with success in court. Part III describes the novel study presented here of cases before Singapore's Supreme Court; Part IV discusses the results.

Consistent with past studies, larger and more expensive law firms tend to do better on average — though Singapore is unusual in that the Government Legal Service functions like the largest and best resourced law firm. Analysis

[1] Loi no 2019-222 du 23 mars 2019 de programmation 2018-2022 et de réforme pour la justice 2019 (France), art 33; 'France Bans Judge Analytics, 5 Years In Prison For Rule Breakers', *Artificial Lawyer*, 4 June 2019.

[2] It is also possible that some lawyers will take on challenging cases precisely because they are challenging. In the medical field, for example, a narrow focus on mortality rates may lead to a false presumption that a doctor who never loses a patient is better than one that is willing to take on more challenging cases.

of the performance of individual lawyers, however, yields unexpected results: more experienced lawyers sometimes have a *lower* success rate in court — perhaps due to them taking on more complex cases. Other interesting findings include that, while women appear far less often than men in the Supreme Court of Singapore, when measured purely by percentage of wins women slightly outperform their male counterparts.

I. THE LEGAL CONTEXT

A. *Equality Before the Law and Duty to the Court*

Equality before the law is a basic component of almost any definition of the rule of law.[3] While a cunning transactional lawyer might develop sophisticated strategies for a client to advance his or her interests and comply with applicable regulations, when a dispute reaches the courtroom the role of the litigation lawyer (known in the English tradition as a barrister) is to assist the court in reaching an outcome that is just.

As Louis Brandeis put it more than a century ago, the advocate's job is to

> present his [*sic*] side to the tribunal fairly and as well as he can, relying upon his adversary to present his case fairly and as well as he can. As the lawyers on the two sides are usually reasonably well matched, the judge or jury may ordinarily be trusted to make such a decision as justice demands.[4]

The qualifiers 'usually', 'reasonably', and 'ordinarily' indicate caution on Brandeis's part, but the statement reflects the basic position embraced by most exponents of the adversarial system.[5] Today, the American Bar Association's Model Rules of Professional Conduct echo Brandeis's language — and its caveats: 'A lawyer's responsibilities … are usually harmonious. Thus, *when an opposing party is well represented*, a lawyer can be a zealous advocate on behalf of a client and at the same time *assume* that justice is being done.[6] In a similar vein, Lord Eldon's oft-quoted statement

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[3] See generally Simon Chesterman, 'An International Rule of Law?' (2008) 56 American Journal of Comparative Law 331.

[4] Louis D Brandeis, 'The Opportunity in the Law' (1905) 39(4) American Law Review 555, 661.

[5] One account, possibly apocryphal, has it that an English judge turned to a barrister after hearing conflicting witness accounts and asked: 'Am I never to hear the truth?' 'No, my lord,' the barrister is said to have replied. 'Merely the evidence.' C. Ronald Huff, 'Wrongful Convictions: The American Experience' (2004) 46(2) Canadian Journal of Criminology and Criminal Justice 107, 114.

[6] American Bar Association, Model Rules of Professional Conduct, Preamble and

that 'truth is best discovered by powerful statements of both sides of the question' is often taken out of its full context:

> The result of the cause is to [the barrister] a matter of indifference. It is for the court to decide. It is for him to argue. He [*sic*] is … merely an officer assisting in the administration of justice and *acting under the impression*, that truth is best discovered by powerful statements of both sides of the question.[7]

With such assumptions operating, under the modern adversarial system typical in common law jurisdictions,[8] a lawyer's first duty is not to the client but to the court.[9] The paramount duty to the court is explicitly provided for in the rules applicable to litigators in jurisdictions such as England and Wales, [10] Australia, [11] and Singapore. [12] This paramount duty is often described as the foundation of a legal system that is fair as well as efficient, and integral to the very notion of a profession of law.[13]

Scope, available at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct.html (emphasis added).

[7] *Ex parte Lloyd* (1822) Mont 70 at 72 (emphasis added).

[8] The present study will not consider civil law jurisdictions, where the role of the advocate is somewhat distinct. See, eg, Matthew T King, 'Security, Scale, Form, and Function: The Search for Truth and the Exclusion of Evidence in Adversarial and Inquisitorial Justice Systems' (2001) 12 International Legal Perspectives 185.

[9] As formulated by Justice David Ipp in a 1998 article, this comprises general duties of disclosure owed to the court, a duty not to abuse process, a duty not to corrupt the administration of justice, and a duty to conduct cases efficiently and expeditiously: David Ipp, 'Lawyers' Duties to the Court' (1998) 114 Law Quarterly Review 63.

[10] Bar Standards Board Handbook (Bar Standards Board, 2016), Core Duty 1: 'You must observe your duty to the court in the administration of justice.' The guidance note goes on to say that this duty 'overrides any other core duty'.

[11] See, eg, Legal Profession Uniform Conduct (Barristers) Rules 2015 (NSW), rule 23: 'A barrister has an overriding duty to the court to act with independence in the interests of the administration of justice.'

[12] Legal Profession (Professional Conduct) Rules 2015 (Singapore), rule 4(a): 'A legal practitioner has a paramount duty to the court, which takes precedence over the legal practitioner's duty to the legal practitioner's client.' In Singapore, the Court of Three Judges (which hears disciplinary complaints against advocates and solicitors) recently explained the duty as 'paramount and trump[ing] all other duties': *Law Society of Singapore v Kurubalan s/o Manickam Rengaraju* [2013] SGHC 135, para. 45. See also Jeffrey Pinsler, 'Ethics in Litigation: Issues Raised by the Legal Profession (Professional Conduct) Rules' (1998) 11 Singapore Academy of Law Journal 284, 285.

[13] Ipp (n 9) 107. Cf Lee E Teitelbaum, 'The Advocate's Role in the Legal System' (1975) 6 New Mexico Law Review 1, 18 (arguing that the lawyer's duties should not be seen as being in tension, but in the context of his or her role in advocating the client's interests).

B. *The Emergence of the Adversarial System*

But it was not always thus. The very language of an 'adversarial' system speaks to the history of litigation, which traces its origins at least in part to the medieval dispute resolution method known as trial by combat. Introduced into England at the time of the Norman Conquest, trial by combat (also known as wager of battle or judicial duel) was initially an alternative to the ordeal of carrying a hot iron.[14] In a typical case, a private person 'appealed' another of a wrong, stating the facts of the case and offering to prove these facts 'by his body'; the person accused refuted the facts and offered to demonstrate innocence using the same means. If a judge determined that a duel was appropriate, a time was set and combat would take place.[15] In England, such trials took place in a field with seating for onlookers.[16]

Over time, the use of 'champions' became widespread: representatives who would battle on behalf of the parties. Though payment of such champions was formally prohibited, the role of champion became a regular occupation.[17] Corporate entities such as the Church necessarily had to engage in combat through such proxies, and some religious bodies maintained champions on retainer for that express purpose.[18]

Success in trial by combat clearly depended in significant part on physical strength and technical prowess. The role of the judge was limited to determining that a duel was appropriate to the case.[19] Justice, such as it was, appears to have been entrusted to an omnipotent God who would not let injustice prevail in battle.[20] The limitations of such mechanisms are now readily apparent, but it was some time before a general crisis in its efficiency and justification saw the emergence of secular arbiters of justice in the form of the jury and a more activist judge.[21] By the fourteenth century, trial by combat had largely been replaced by trial by jury, though the possibility of resolving conflict through battle remained until the nineteenth century in

[14] George Neilson, *Trial by Combat* (William Hodge 1890) 31. Cf MJ Russell, 'Trial by Battle in the Court of Chivalry' (2008) 29(3) Journal of Legal History 335.

[15] Neilson (n 14) 36-39.

[16] As Blackstone recounts, weapons were restricted to 'batons, or staves, of an ell long, and a four-cornered leather target; so that death very seldom ensued': William Blackstone, *Commentaries on the Laws of England* (Clarendon Press 1768) vol 3, 339.

[17] Neilson (n 14) 46-48.

[18] ibid 13-14.

[19] ibid 36-39.

[20] Wm C Plouffe, Jr, 'Adversarial Justice' in Wilbur R Miller (ed), *The Social History of Crime and Punishment in America: An Encylopedia* (Sage 2012).

[21] RC Caenegem, *The Birth of the English Common Law* (first published 1973, 2nd edn, Cambridge University Press 1988) 62-84.

England.[22] More recent efforts to claim trial by combat have periodically been asserted — and dismissed — in England[23] and the United States.[24]

It would be incorrect to draw a direct line from the role of champions in trial by combat to the role of litigators in modern court proceedings. Early juries tended to be self-informing bodies with rudimentary procedures; it took centuries for the adversarial system to develop into its modern form of a neutral tribunal of fact before which advocates do 'battle'. Legal representation became necessary in England partly because of increasing complexity and language demands, as early trials were conducted in French.[25] The argument is not, therefore, that trial by combat gave rise to the adversarial system as such. Rather it is that both reflect a view of justice as being reached through zealous efforts by or on behalf of disputatious parties.[26]

The role of the tribunal today is also radically different. Far from merely determining that trial by combat was appropriate to the case and conducted in accordance with the rules, the modern jury (if applicable) and/or judge serve as independent tribunals of fact and law. Leaving aside the interference of a just God in trial by combat, it is the jury and/or judge that determines the outcome, rather than the physical strength or skill of the disputant or his or her champion. In modern parlance, a judge should reach a just outcome — regardless of the quality of the arguments put before him or her.[27]

C. *When Bad Lawyers Lose*

Just as the working assumption is that the better lawyer should not necessarily win, there are limitations on being able to claim that a substandard lawyer was the reason a given cause of action was lost. In English law, a barrister was long immune from suit 'to protect him from the risk of being sued for

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[22] Appeal of Murder Act 1819 (England); Robert Megarry, *A New Miscellany-at-Law: Yet Another Diversion for Lawyers and Others* (Hart Publishing 2005) 62-66.

[23] David Sapsted, 'Court Refuses Trial by Combat', *Telegraph* (London, 16 December 2002).

[24] Eugene Volokh, 'Staten Island Lawyer Demands Trial by Combat', *Washington Post* (6 August 2015); Brittany Shammas, 'Man Requests "Trial by Combat" Using Japanese Swords to Resolve a Dispute with his Ex-wife', *Washington Post* (16 January 2020).

[25] See generally James A Brundage, *The Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts* (University of Chicago Press 2008).

[26] Cf Edward L Rubin, 'Trial by Battle, Trial by Argument' (2003) 56(2) Arkansas Law Review 261, 277-78.

[27] See, eg, Russell Engler, 'Ethics in Transition: Unrepresented Litigants and the Changing Judicial Role' (2008) 22 Notre Dame Journal of Law, Ethics & Public Policy 367; Sande L Buhai, 'Access to Justice for Unrepresented Litigants: A Comparative Perspective' (2009) 42 Loyola of Los Angeles Law Review 979; John Eekelaar, 'Litigants in Person — the Struggle for Justice' (2015) 37(4) Journal of Social Welfare and Family Law 463.

doing no more than his duty to the court'.[28] This immunity was later found not to extend to preliminary questions outside the courtroom, such as a negligent decision to sue the wrong defendant in relation to a traffic accident.[29] In that case, Lord Diplock explained the reasons for maintaining the immunity as being justified by (a) the general immunity from civil liability for persons in respect of their participation in court proceedings; and (b) the need to maintain the integrity of public justice, which would be undermined by suggestions that a court made a flawed decision because of a barrister's 'lack of skill or care'.[30] In 2000 the House of Lords again revisited the issue and concluded, in *Arthur JS Hall and Co v Simons*, that the public policy reasons for maintaining immunity no longer justified the anomalous protection of barristers.[31]

The Australian High Court considered the matter five years later and held that the immunity should remain, primarily due to the concern that 'controversies, once resolved, are not to be reopened except in a few narrowly defined circumstances. This is a fundamental and pervading tenet of the judicial system, reflecting the role played by the judicial process in the government of society.'[32] In a 2016 decision, the High Court reaffirmed the existence of the immunity but confined it to 'conduct of the advocate which contributes to a judicial determination'.[33]

Singapore, for its part, had earlier decided against any special immunity for lawyers. The main concern justifying it, Yong Pung How CJ held, was the fear of re-litigation. This was most pressing in the context of criminal trials, where it was necessary to ensure that convictions would be challenged only in the proper forum — on appeal through the criminal process, rather than through a civil law action in negligence. But a general immunity was unnecessary to guard against such outcomes.[34]

In the United States, the Sixth Amendment right to adequate representation may provide a basis for an appeal against a criminal conviction if a lawyer's conduct can be shown to have fallen below an 'objective standard of reasonableness' and that there is a reasonable probability that,

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[28] *Jones v Kaney* [2011] UKSC 13, para. 27 (citing *Rondel v Worsley* [1969] 1 AC 191).

[29] *Saif Ali v Sydney Mitchell & Co* [1980] AC 198.

[30] *Saif Ali v Sydney Mitchell & Co* [1980] AC 198, 222 (Lord Diplock).

[31] *Arthur JS Hall and Co v Simons* [2000] UKHL 38. See also Sarah Devaney, 'Balancing Duties to the Court and Client: The Removal of Immunity from Suit of Expert Witnesses' (2012) 20(3) Medical Law Review 450.

[32] *D'orta-Ekenaike v Victoria Legal Aid* [2005] HCA 12, para. 45, upholding *Giannarelli v Wraith* (1988) 165 CLR 543.

[33] *Attwells v Jackson Lalic Lawyers Pty Limited* [2016] HCA 16, para. 37.

[34] *Chong Yeo & Partners & Anor v Guan Ming Hardware & Engineering Pte Ltd* [1997] 2 SLR(R) 30, para. 51 (Yong Pung How CJ, going on to observe that '[m]any of the problems highlighted would not be faced locally as juries are no longer in use here').

'but for counsel's unprofessional errors, the result of the proceeding would have been different'.[35] Yet such appeals are rarely successful,[36] even in cases where the lawyer in question was found to have been senile,[37] drunk,[38] or asleep.[39]

D. *The Market for Justice*

In principle, then, parties are equal before the court. Yet the history of the adversarial system suggests the important role of having a champion for one's cause. The ongoing relevance of this is supported by the market for legal services in which there is competition for talent and wide variation in the price charged by law firms and lawyers.

Reservations concerning this commercial reality are reflected in the professional conduct rules that restrict lawyers advertising their skills in general and citing success rates in particular.[40] In Singapore, for example, lawyers are specifically prohibited from making direct or indirect mention of 'the success rate of the legal practitioner'.[41] This has been interpreted as requiring advertisements to avoid express or implied claims that one law firm is superior to others.[42] Meanwhile, as we have seen, arguments over whether to allow challenges to adverse decisions because one's lawyer was inferior often turn not on whether that explains the result, but on whether it would be against public policy and undermine faith in the system as a whole — in particular, in the finality of litigation.[43] In those circumstances where such challenges are successful, the test in the United States is not merely that a lawyer's performance was inferior to his or her opponent but exhibited 'unprofessional errors' and was outside the realm of 'reasonableness'.

Further evidence of the influence lawyers are presumed to have can also be found in the rules concerning the resolution of what we might term low-stakes disputes. In small claims tribunals, for example, civil disputes below a

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[35] *Strickland v Washington*, 466 US 668 (1984), paras 41, 56.

[36] See, eg, *Padilla v Commonwealth of Kentucky*, 559 US 356 (2010) (ineffective assistance of counsel found in a case where the lawyer incorrectly advised a a non-citizen defendant that pleading guilty would not lead to deportation).

[37] *Bellamy v Cogdell*, 974 F2d 302 (2d Cir. 1992).

[38] *People v Garrison*, 765 P2d. 419, 440 (Cal. 1989).

[39] *Muniz v Smith*, 647 F3d 619 (6th Cir. 2011).

[40] See, eg, New York Rules of Professional Conduct: Part 1200 2013 (New York State), rule 7.1.

[41] See Legal Profession (Professional Conduct) Rules, rule 43(1)(b)(ii).

[42] Jeffrey Pinsler, *Legal Profession (Professional Conduct) Rules 2015* (Academy Publishing 2016) 667.

[43] Susan Kiefel, 'Actions for negligence against barristers in England and Australia' (International Malaysia Law Conference, Kuala Lumpur, 24-26 September 2014).

certain threshold may be resolved by a tribunal that specifically *prohibits* lawyers from representing either side.[44]

II. PAST STUDIES

The legal position, then, is that — excluding extreme cases — the quality of advocacy is assumed to be marginal to the outcome of a given case, and that past litigation outcomes should not factor in a client's choice of his or her lawyer. The market for legal services suggests precisely the opposite, of course, and a number of studies have examined the relationship between litigation outcomes and parties to disputes as well as the role of lawyers in representing them.

A. *Litigants*

The classic study by Galanter examined litigation outcomes in structural terms, in particular the way in which 'the basic architecture of the legal system creates and limits the possibilities of using the system as a means of redistributive (that is, systemically equalizing) change.'[45] A key distinction drawn by Galanter was between 'one-shotters', who interact with the legal system less frequently and tend to have fewer resources (the 'have-nots'), and repeat players, whose familiarity with the litigation process and tendency to have more resources (the 'haves') create certain advantages in terms of litigation outcomes.[46]

Subsequent studies suggested a more complicated picture, at least with respect to the US Supreme Court. In particular, in the decades before 1970 one-shotters in civil liberties cases against government actually *won* their cases in the Supreme Court more often than not.[47] That pattern reversed from around 1970, with a plausible explanation being changes in the Court's ideological mix in addition to the asymmetries of resources as between litigants.[48]

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[44] See, eg, Small Claims Tribunals Act 1984 (Cap 308, 1998 Rev Ed, Singapore) s 23(3) (parties in claims not exceeding $10,000 not to be represented by advocates or solicitors, paid or otherwise).

[45] Marc Galanter, 'Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change' (1974) 9 Law & Society Review 95.

[46] See also Herbert M Kritzer and Susan S Silbey (eds), *In Litigation: Do the "Haves" Still Come Out Ahead?* (Stanford University Press 2003).

[47] S. Sidney Ulmer, 'Governmental Litigants, Underdogs, and Civil Liberties in the Supreme Court: 1903-1968 Terms' (1985) 47(3) Journal of Politics 899.

[48] Reginald S Sheehan, William Mishler, and Donald R Songer, 'Ideology, Status, and

For present purposes, the socio-economic status of litigants has an important effect on their capacity to retain more expensive lawyers, but that status is not itself central to the research questions being considered.

B. *Litigators*

There are various studies that suggest a correlation between litigator qualities and litigation outcomes, though none appear to have examined as thoroughly the relationship between lawyer qualities and litigation outcomes as was undertaken here — in particular the repeat encounter of an appeal of the same matter but with different lawyers, and the possibility of tracking a lawyer's performance through his or her career. Prior studies tend to focus on one or more litigator qualities, ranging from educational background to professional ranking. The strongest data seems to support a correlation between experience and success.

1. *Educational Background*

There is a well-established correlation between the educational credentials of a lawyer and his or her *income*.[49] Lawyers from elite schools also tend to be overrepresented in litigation before top courts, such as the US Supreme Court.[50]

Nevertheless, the evidence that this translates to court victories is scant. In the limited study of Abrams and Yoon, concerning Las Vegas public defenders, there was no significant correlation between law school attended, based on *US News & World Report* rankings, and outcomes for clients.[51] There does not appear to have been a major study at the appellate level that considers the impact (if any) of educational background on outcomes.

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the Differential Success of Direct Parties Before the Supreme Court' (1992) 86 American Political Science Review 464; Ryan C Black and Christina L Boyd, 'US Supreme Court Agenda Setting and the Role of Litigant Status' (2012) 28(2) Journal of Law, Economics and Organization 286.

[49] Elizabeth Olson, 'Not Only Elite Law Schools Offer Great Returns on Investment', *New York Times* (24 January 2017) (citing the Social Finance, Inc 'Return on Education' Law School Rankings 2017).

[50] Kevin T McGuire, 'Lawyers and the US Supreme Court: The Washington Community and Legal Elites' (1993) 37(2) American Journal of Political Science 365.

[51] David S Abrams and Albert H Yoon, 'The Luck of the Draw: Using Random Case Assignment to Investigate Attorney Ability' (2007) 74 University of Chicago Law Review 1145.

2. *Experience*

The experience of lawyers in arguing before the same court makes them, in Galanter's argot, the archetypal 'repeat players'.[52] Various studies have found strong correlations between experience before a particular court and success in litigation outcomes.

McGuire's 1995 study of the US Supreme Court examined decisions from 1977 to 1982. In cases where one side was represented by a lawyer with more experience arguing before the Supreme Court, that side — controlling for various other factors — was more likely to prevail. In a neutral match-up, the probability of success for a petitioner was 0.66. A more seasoned advocate raised that probability to 0.73; when the petitioner had a less-experienced lawyer it dropped to 0.58.[53] The same study concluded that the experience of counsel was as important as the identity of the litigants in determining outcomes.[54]

Similarly, in their study of randomly assigned public defenders in Las Vegas felony cases, Abrams and Yoon found that lawyers with more experience tended to achieve better outcomes for their clients. A veteran public defender with ten years of experience, on average, reduced the length of incarceration by 17 percent as compared to a novice public defender in his or her first year. They found no statistically significant difference based on law school attended or gender.[55]

A 1999 study of US Court of Appeals decisions on product liability by Haire, Lindquist, and Hartley found that expertise in the area of law was a relevant factor. In particular, when defendants were represented by non-specialists, the court was more likely to find for the plaintiff. A separate finding was that judges were less likely to support plaintiffs when represented by counsel appearing before that court for the first time.[56]

On the other hand, a study of Canadian lawyers found mixed results that

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[52] Galanter (n 45) 114.

[53] Kevin T McGuire, 'Repeat Players in the Supreme Court: The Role of Experienced Lawyers in Litigation Success' (1995) 57(1) Journal of Politics 187, 194. There are some methodological limitations to this study as it treats the number of Supreme Court appearances in that six-year window as the level of 'experience' before the Court. Hence someone who appears ten times in that period at the end of a long career is treated as having the same experience as someone who appears ten times in that period at the beginning of their career.

[54] ibid.

[55] Abrams and Yoon (n 51). They found that race of the public defender was also significant, with Hispanic lawyers achieving sentences 26 percent shorter than those of black or white lawyers.

[56] Susan Brodie Haire, Stefanie A Lindquist, and Roger Hartley, 'Attorney Expertise, Litigant Success, and Judicial Decision-Making in the US Court of Appeals' (1999) 33(3) Law & Society Review 667.

would not support a strong relationship between experience and success,[57] though a second study of the Supreme Court of Canada found a statistically significant and positive relationship between prior litigation experience and success.[58]

A South African study of reported decisions of the Supreme Court of Appeal between 1970 and 2000 also found no direct correlation between experience (measured as appearances before the Court) and success, but concluded that a better predictor of future outcomes was past success.[59]

3. *Status as Senior Counsel*

One measure of quality in many Commonwealth jurisdictions is the rank of Senior Counsel, currently held by 80 of the 5,920 practising lawyers admitted to the Singapore Bar.[60] Senior Counsel are selected by the Chief Justice, the Attorney-General, and the Judges of Appeal on the basis of their 'ability, standing at the Bar or special knowledge or experience in law'.[61] In limited circumstances, clients may also be able to retain Queen's Counsel (or the equivalent) from a foreign jurisdiction, if that person is deemed by the court to have 'special qualifications or experience for the purpose of the case'.[62]

There has been no prior study as to whether Senior Counsel in Singapore win in court more often than non-Senior Counsel. Anecdotally, there have been instances in which a Senior Counsel has removed him- or herself from a case in which it appeared that a loss was likely against a non-Senior Counsel.[63] This is an extreme version of selection bias considered in section III.A.3.

In India, Senior Advocates constitute only 1 percent of the bar. A study of special leave petitions found a correlation between the status of Senior Advocate and success in special leave petitions. Where a Senior Advocate

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[57] Roy B Flemming, *Tournament of Appeals: Granting Judicial Review in Canada* (UBC Press 2004) 43-60.

[58] John Szmer, Susan W Johnson, and Tammy A Sarver, 'Does the Lawyer Matter? Influencing Outcomes on the Supreme Court of Canada' (2007) 41(2) Law & Society Review 279.

[59] Stacia L Haynie and Kaitlyn L Sill, 'Experienced Advocates and Litigation Outcomes: Repeat Players in the South African Supreme Court of Appeal' (2007) 60(3) Political Research Quarterly 443.

[60] As of January 2020 there were 88 on the list maintained by the Singapore Academy of Law, of whom four were honoris causa, and four are deceased: https://www.sal.org.sg/Services/Appointments/Senior-Counsel/Directory. The number of lawyers is the 2019 figure provided by the Law Society: http://www.lawsociety.org.sg/AboutUs/GeneralStatistics.aspx

[61] Legal Profession Act 1966 (Cap 161, 2009 Rev Ed, Singapore), s 30(1).

[62] ibid, s 15(1)(c).

[63] Confidential interviews.

appeared, 60 percent of petitions were granted; where no Senior Advocate was involved, the success rate was 34 percent. The correlation was not limited to high stakes cases in which well-resourced clients retain lawyers to fight high-stakes cases. The success was not uniform across all subject matters, however. For indirect tax matters, an *inverse* relationship was found, with non-Senior Advocates having slightly more success than their garlanded counterparts.[64]

The Canadian study that supported a link between litigation experience and success also considered the impact of Queen's Counsel (QC) designation but found no correlation between the presence of a QC on one team and success in court.[65]

4. *Professional Rankings*

Much as law school rankings employ dubious methodologies but can be central to student choices, rankings of lawyers are more impressionistic than scientific. One might, however, expect rankings to affect outcomes insofar as those rankings reflect expert judgments of qualified observers (other lawyers, judges, etc).

Hanretty's survey of tax cases in England and Wales between 1996 and 2010 found no significant positive effect of having better-ranked legal representation based on the rankings published by *Chambers*. There was a possible correlation between lawyer ranking and outcomes only if the better-ranked lawyers received cases that were substantially more difficult than average.[66] This may suggest that lawyer quality might have a greater impact in more complex cases, a possibility consider in section IV.C.3 below.

5. *Judicial Perception*

A lawyer's reputation in the eyes of the judiciary may influence decisions also.[67] The extent of such influence is hard to measure, as judges tend not to

[64] Alok Prasanna Kumar, 'Does a Senior Counsel Double Your Chances of Success in the SC? Research Suggests It Might', *Legally India*, 15 September 2015. See also Marc Galanter and Nick Robinson, 'India's Grand Advocates: A Legal Elite Flourishing in the Era of Globalization' (2013) 20(3) International Journal of the Legal Profession 241 (describing the outsize role played by 'Grand Advocates' in India's legal system).

[65] Szmer, Johnson, and Sarver (n 58). Note that QC appointments in Canada have periodically been suspended at the federal and provincial level, and so are questionable as a stable measure of lawyer 'quality'. See, eg, Ben Rigby, 'Five Solicitors Appointed in Record-Breaking Year for Silk Appointments', *Commercial Dispute Resolution*, 3 January 2018.

[66] Chris Hanretty, 'Lawyer Rankings Either Do Not Matter for Litigation Outcomes or Are Redundant' (2016) 23(2) International Journal of the Legal Profession 185.

[67] Fred C Zacharias, 'Effects of Reputation on the Legal Profession' (2008) 65(1) Washington & Lee Law Review 173, 202.

credit their decisions to the specific quality of advocacy presented to them.

An unusual exception to this was the discovery of notes by former US Supreme Court Justice Harry Blackmun covering the period 1970 to 1994, including substantive comments about individual lawyer's arguments and a grade for their presentation. Those lawyers rated more highly for their advocacy tended to find more support not only with Blackmun J himself, but also with his fellow judges.[68] Hanretty extrapolates from this to surmise that a judge's evaluation of a lawyer in a specific case might be predictive, all else being equal, or that lawyer's performance more generally.[69]

A 2015 examination of asylum merits decisions from 1990 to 2010 by Miller *et al* found that judge-specific attorney reputation was more influential than a lawyer's overall record of success. A lawyer who had won every case before a particular judge, for example, was 64 percent more likely to prevail when facing a lawyer who had lost every prior case before that judge.[70]

There is some evidence that judges may try to counter their own predilections. A 2011 study by Posner and Yoon drew on a survey of 666 US judges concerning their views on the quality of legal representation. A majority of judges felt that they were less likely than a jury to be swayed by good advocacy, and that they engaged in additional research to compensate for disparities in representation of parties before them.[71]

6. *Financial Incentives*

Although there are reasonably robust findings that wealthier clients typically achieve better outcomes in court,[72] there is surprisingly little data on whether there is a correlation between lawyer remuneration and victory in court. Though litigation team size and professional ranking may serve as proxies for remuneration, a direct comparison between the hourly rates of two lawyers would be a valid test of market expectations.

The influence of financial incentives was considered in a study of Taiwanese criminal cases involving indigent defendants between 2004 and 2007, comparing the outcomes achieved by public defenders and

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[68] Timothy R Johnson, Paul J Wahlbeck, and James F Spriggs, 'The Influence of Oral Arguments on the US Supreme Court' (2006) 100(1) American Political Science Review 99 (at times the grade was a numerical score on an eight-point or hundred-point scale, at times a letter grade in the range A-F).

[69] Hanretty (n 66) 189.

[70] Banks Miller, Linda Camp Keith, and Jennifer S Holmes, 'Leveling the Odds: The Effect of Quality Legal Representation in Cases of Asymmetrical Capability' (2015) 49(1) Law & Society Review 209, 228.

[71] Richard A Posner and Albert H Yoon, 'What Judges Think of the Quality of Legal Representation' (2011) 63 Stanford Law Review 317, 320.

[72] See above section II.A.

government-contracted legal aid lawyers. Those represented by public defenders tended to have higher conviction rates, but shorter sentences if convicted. The authors explain these differences by institutional characteristics but also pecuniary incentives.[73]

A study comparing the outcomes of public defenders and privately retained lawyers in Cook County, Illinois, found that public defenders, though paid less, were not less effective than other lawyers, possibly because of their working relationships with prosecutors and judges.[74]

A similar study in Israel found no difference in outcomes for public and private defenders in most situations, but in what the authors categorised as the 'best case scenario' (defendant had no prior convictions, there was no probation report, no prosecution witnesses, and the defence was able to bring witnesses of its own) it was a clear advantage to have a private lawyer.[75]

7. *Litigation Team Size*

The size of a litigation team is, in part, a measure of the resources that a client is willing to devote to a case. In the Canadian study of non-reference decisions by the Supreme Court, litigation team size ranged from a single lawyer to a team of nine. All other things being equal, the larger team had a higher probability of success.[76]

8. *Extraneous Factors*

Additional factors have also been found to influence lawyer behaviour. A 2005 study by Boylan and Long of US federal prosecutors found that in high-salary districts federal prosecutors were more likely to bring cases to trial and also have higher turnover rates. The authors concluded that this was because individuals in high-salary districts sought trial experience that would assist them in finding private-sector employment.[77]

An innovative study published in 2016 used a simulation designed for sitting judges to examine the factors that affect decision-making individual cases, in particular contrasting the weight of precedent and legally irrelevant

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[73] Kuo-Chang Huang, Kong-Pin Chen, and Chang-Ching Lin, 'Does the Type of Criminal Defense Counsel Affect Case Outcomes? A Natural Experiment in Taiwan' (2010) 30(2) International Review of Law and Economics 113.

[74] Richard D Hartley, Holly Ventura Miller, and Cassia Spohn, 'Do You Get What You Pay For? Type of Counsel and Its Effect on Criminal Court Outcomes' (2010) 38(5) Journal of Criminal Justice 1063.

[75] Arye Rattner, Hagit Turjeman, and Gideon Fishman, 'Public Versus Private Defense: Can Money Buy Justice?' (2008) 36 Journal of Criminal Justice 43.

[76] Szmer, Johnson, and Sarver (n 58).

[77] Richard T Boylan and Cheryl X Long, 'Salaries, Plea Rates, and the Career Objectives of Federal Prosecutors' (2005) 48(2) Journal of Law & Economics 627.

defendant characteristics. A survey of law professors concluded that precedent would have a stronger effect than characteristics of the defendant. In actuality, the effect of precedent was negligible and the authors concluded that the unsympathetic qualities of the defendant explained a 45 percent difference in the decisions — though written reasons referred only to precedent and other legal and policy considerations.[78]

9. *Success Rates*

Though somewhat circular, a high degree of past success may correlate with future success. Lawyers in various jurisdictions are prohibited from advertising on this basis,[79] but the research firm Premonition published a 2014 study of 11,647 cases from the High Courts of England and Wales in the period 2012-2014[80] with win-loss ratios for firms and lawyers. Similar studies have been done by Justice Toolbox[81] and Lex Machina.[82] These tend to be for-profit enterprises aimed at guiding the choice of lawyer by sophisticated clients, with the explicit goal of identifying past successes rather than explaining them.

The South African study mentioned earlier did find a correlation between win-loss index (number of wins minus number of losses) and victory in the Supreme Court of Appeal.[83] There is, however, a degree of tautology in concluding that lawyer A, who has a better win-loss index than lawyer B, is more likely to have won against lawyer B in a previous encounter.

Of potentially more interest is a correlation between *judge-specific* past success, discussed above in section II.B.5. In Miller *et al*'s 2015 study of asylum merits decisions, this was found to be central.[84] The same study also concluded that, with respect to asylum decisions, having *no* lawyer was better than having a bad lawyer.[85]

III. METHOD

The present study attempts to answer the following questions. First, to what

[78] Holger Spamann and Lars Klöhn, 'Justice Is Less Blind, and Less Legalistic, than We Thought: Evidence from an Experiment with Real Judges' (2016) 45(2) Journal of Legal Studies 255.

[79] See above n 41.

[80] United Kingdom High Courts Report 2014 (Premonition, 2015).

[81] https://www.justicetoolbox.com.

[82] https://lexmachina.com.

[83] Haynie and Sill (n 59).

[84] See above n 70.

[85] Miller, Keith, and Holmes (n 70) 230.

extent does a lawyer's success rate in court correlate with the following *relative* qualities compared with the opposing lawyer: years of experience; size of law firm; size of team in a particular case; status as Senior Counsel or Queen's Counsel; and gender. Secondly, to what extent do above- and below-average success rates compare with *average success rates*? For example, if defence lawyers win x% of cases, to what extent does variation from that predicted success rate correlate with the independent variables listed earlier.

A. *Caveats*

1. *Trials and Appeals*

A criticism of much empirical work on the legal system is that it unduly focuses on trials in general and appeals in particular.[86] Estimates vary, but only a tiny proportion of legal disputes end up in court, and only a fraction of those reach the appellate courts.[87]

Priest and Klein, for example, sought to clarify the relationship between cases that are settled and those that proceed to court. Assuming that potential litigants in civil suits make rational estimates of the likely outcome at trial, they argue that 'where the gains or losses from litigation are equal to the parties, the individual maximizing decisions of the parties will create a strong bias toward a rate of success for plaintiffs at trial or appellants at appeal of 50 percent regardless of the substantive standard of law.'[88] This 50 percent rule is a limit case only — approached as the standard of decision is clearer, parties' estimate of the quality of their own cases is more accurate, and the stakes on either side are of similar value. In general, this should mean that if a lower proportion of potential disputes reach court, the success rate should approach 50 percent.[89]

The Priest-Klein model presents an interesting research angle focusing on areas of law in which the success rate departs from 50 percent. Such a finding might indicate the influence of the lawyers — a factor largely dismissed by the Priest-Klein model — or that an area of law is uncertain or dominated by

[86] Indeed, there are criticisms of legal education generally as focusing unduly on appellate courts that are far removed from the day-to-day work of most lawyers. See, eg, Ralph Michael Stein, 'The Path of Legal Education from Edward I to Langdell: A History of Insular Reaction' (1981) 57 Chicago-Kent Law Review 429.

[87] Michael S Hamilton and George W Spiro, *The Dynamics of Law* (4th edn, Routledge 2015) 64.

[88] George L Priest and Benjamin Klein, 'The Selection of Disputes for Litigation' (1984) 13(1) Journal of Legal Studies 1, 4-5.

[89] ibid 19-20.

litigants with asymmetric stakes in the disputes.[90]

Poitras and Frasca offer an interesting elaboration of the Priest-Klein model that seeks to include variable trial costs. The original model assumes that trial costs are a function of the amount at stake, whereas there is some evidence that parties can vary trial cost estimates.[91]

A particular area that would be worthy of study is the role that plea-bargaining plays in establishing incentives for defendants in criminal trials to plead guilty in exchange for a lesser sentence.

2. *'Winning'*

Winning or losing cases may be due to many factors other than the quality of the lawyers involved. Individual cases are unique, but even with a large number of cases it may be difficult to control for factors other than lawyer quality. As one scholarly account puts it: 'poor lawyers win cases, and good lawyers lose cases'.[92]

A related general concern is that 'winning' in court may not be the same as a successful outcome for a party. Given the specifics of an individual case, it is difficult to determine whether the outcome of litigation is better, worse, or the same as might have been achieved without resort to the courts.[93] In addition, some clients may pursue litigation not only to win a particular case, but with an eye to a class of cases in which he, she, or it has an interest in shaping the law.[94]

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[90] See, eg, Seth A Seabury, 'Jury Verdicts, Settlement Behavior and Expected Trial Outcomes' (2013) 33 International Review of Law and Economics 15 (discussing the impact of recent verdicts on decisions to settle).

[91] Marc Poitras and Ralph Frasca, 'A Unified Model of Settlement and Trial Expenditures: The Priest–Klein Model Extended' (2011) 31 International Review of Law and Economics 188, 189: 'our model permits a more continuous set of outcomes. Besides settlement, the parties can conserve resources in one-sided cases by litigating them at lower levels of expenditure. Litigants might restrain expenditures by retaining lower-priced legal talent, assembling a smaller legal team, performing less research, employing fewer expert witnesses, etc.'

[92] R. Moorhead, A Sherr, and A Paterson, 'What Clients Know: Client Perspectives and Legal Competence' (2003) 10(1) International Journal of the Legal Profession 5, 25. Such a view of the law is embraced in its mythology. A nineteenth century account of Justice Wightman describes him meeting a member of a jury and asking what the man thought of the lawyers he had observed. '"Well," said the juryman, "that lawyer Brougham be a wonderful man. He can talk, he can; but I don't think nowt of Lawyer Scarlett." "Indeed!" exclaimed the judge, "you surprise me. Why, you have been giving him all the verdicts." "Oh, there's nowt in that," was the reply, "he be so lucky, you see; he be always on the right side."' Croake James, *Curiosities of Law and Lawyers* (Banks 1883) 484.

[93] Joel B Grossman, Herbert M Kritzer, and Stewart Macaulay, 'Do the "Haves" Still Come out Ahead?' (1999) 33(4) Law & Society Review 803, 809.

[94] Cf Catherine Albiston, 'The Rule of Law and the Litigation Process: The Paradox of

For present purposes, however, the focus is on litigation outcomes only.

3. *Selection Bias*

Selection bias is a particular challenge with regard to both clients and lawyers. Do clients retain more expensive lawyers because they (a) have a poor case and want to maximize their chances of winning; (b) have a good case and want to minimize their chances of losing; or (c) have more resources to deploy and spend as much as they can afford? Selection bias might be reduced when the stakes are high: a small chance of winning a big case may encourage a client to invest resources in litigation.

Here it is noteworthy that Singapore has a different incentive structure for clients than some of the previous studies, in particular those in the United States. Unlike the United States, in which contingency fees may encourage clients and their lawyers to bring speculative cases — where the client pays nothing if he or she loses but the lawyer gets a percentage of any winnings — in Singapore the lawyer gets paid whether the case is successful or not.

As for the lawyers, it is possible that certain advocates are more selective in the cases that they take on, and the cases that they bring to trial. If a good lawyer will either decline to take or settle a bad case, he or she may 'win' more often primarily because of only competing when there is a high expectation of winning.

The study by Abrams and Yoon is a rare example of a study that controls for selection bias effectively by using data from randomly assigned public defenders in Las Vegas felony cases.[95] As a consequence, however, its findings are limited to a narrow category of relatively simple cases.

4. *Limitations*

Despite the above caveats, there appears to be a sound basis for examining impact on the binary dependent variable of an appeal, suit, or prosecution being successful (or, conversely, of being successfully defended). Among other things, this may help predict whether a 'better' lawyer taking one's case and bringing it to court indicates a higher likelihood of winning.

B. *Data*

The study covers cases that reached an outcome in Singapore's Supreme Court in the period 2015-2016. Each case was treated as a separate contest

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Losing by Winning' in Herbert M Kritzer and Susan Silbey (eds), *In Litigation: Do the "Haves" Still Come Out Ahead?* (Stanford University Press 2003).

[95] Abrams and Yoon (n 51).

with a 'winner' and a 'loser'. The cases included decisions by the (i) Court of Appeal, (ii) the High Court exercising original jurisdiction, and (iii) High Court appeals from State Courts/Subordinate Courts.

All lawyers who appeared as lead counsel before the Supreme Court were given a unique identifier to track their performance. The following data was recorded for each lawyer: year of birth; gender; year called to the Bar; and year appointed Senior Counsel or Queen's Counsel (if applicable). Law Firms were also given unique identifiers and categorized based on the number of lawyers active in 2016.

For each case, the following data were recorded: the relevant court; date of the decision; whether it was an appeal; the subject matter (based on LawNet categories adopted by the Singapore Academy of Law, using the first subject line only); and the dependent variable of whether it was a win or a loss for the first-named party. First-named parties were categorized based on the type of entity (individual, Government, corporation, association, partnership), their lead counsel (linked to unique identifier of lawyers, above), size of the team identified as appearing in court; and the law firm he or she represented (linked to unique identifier of law firms, above). Additional data were collected, including proxies for the complexity of a case: days of hearings, number of words in the written judgment, and whether amici curiae were appointed.[96]

IV. RESULTS

A. *The Cases*

The 680 cases collected included 388 Court of Appeal decisions, 279 High Court decisions, and a handful of others as shown in Figure 1.

[96] It is noted that word count may not always reflect complexity if a lengthy factual record dominates. Nonetheless, interviews with judges and counsel suggested that, everything else being equal, a longer judgment generally reflected a more complex case for the limited purposes used in this study.

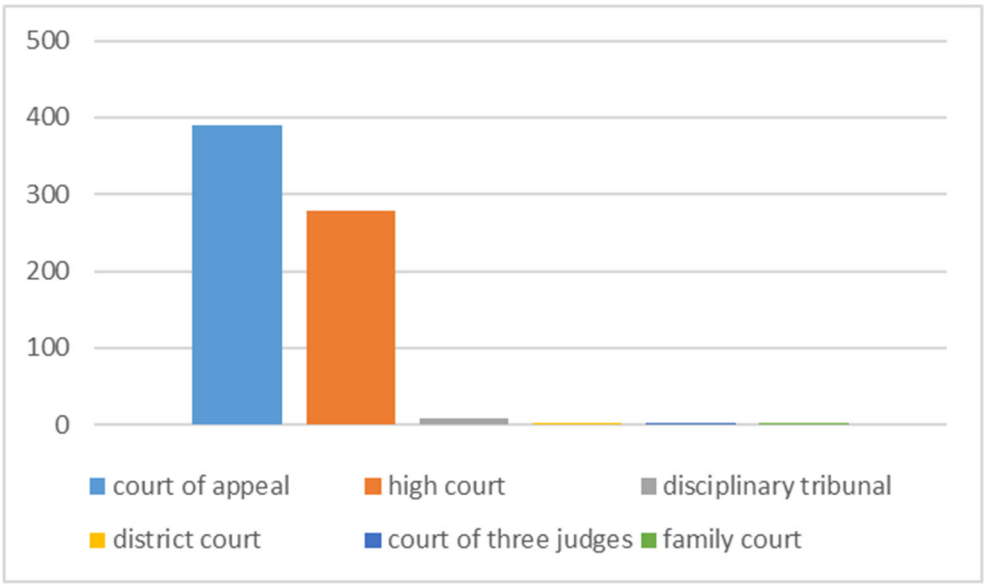

Figure 1 — Cases included in the dataset.

Subject matter covered a wide variety of topics (categorised by their LawNet subjects), with the two largest being Criminal and Family Law. Figure 2 shows the breakdown.

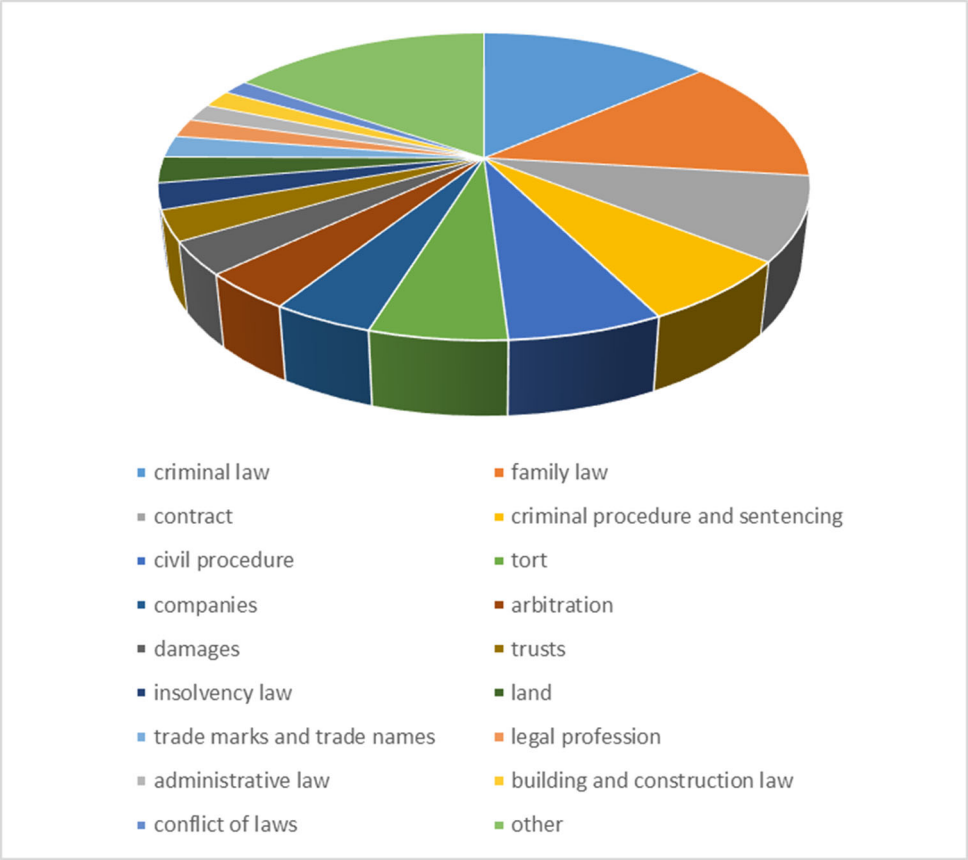

Figure 2 — Subject areas.

B. *The Lawyers*

A total of 446 unique lawyers appeared as lead counsel: 369 men and 77 women. (A further 70 litigants-in-person appeared on their own behalf and are, for the most part, excluded from the study.) Thirteen counsel appeared in 10-20 cases, with three counsel appearing more than 20 times. Figure 3 shows the number of lead counsel who appeared in the study, with their years of experience, measured as years since the lawyer was admitted to practice.

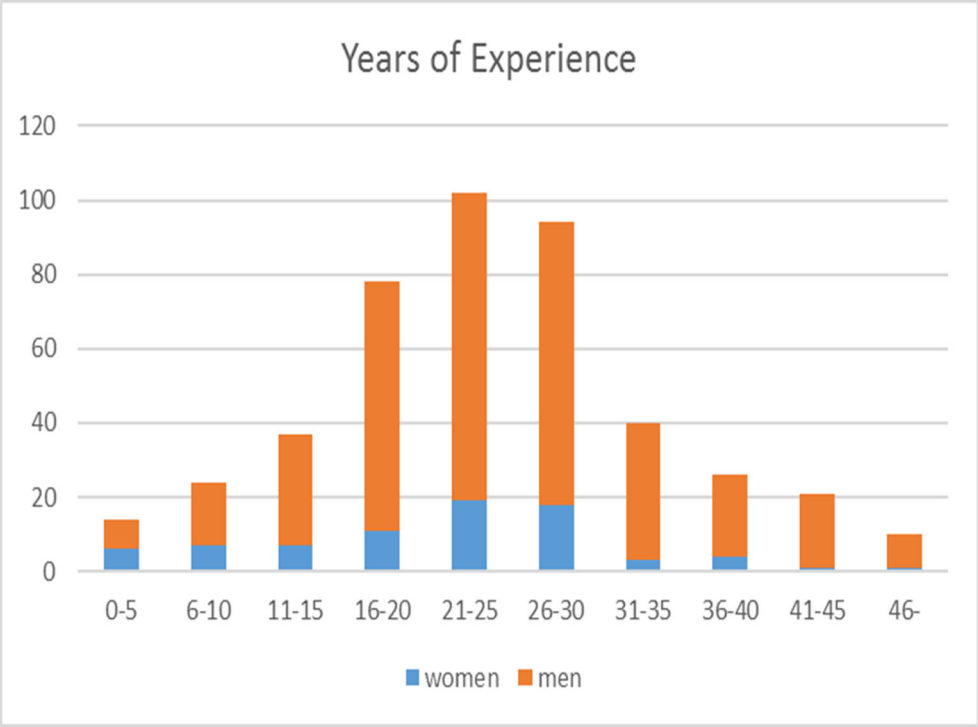

Figure 3 — Number of lawyers grouped by years of experience.

As is clear, the majority of lead counsel have between 16 and 30 years of experience. As might be expected, junior and very senior lawyers appear less often. Figure 3 also breaks down the appearances by gender, showing that the number of men and women is broadly equal in the first years of practice, but the proportion of women drops significantly after five years.

An interesting finding is that the experience of lead counsel used by Government is significantly below average. (See Table 1.) This is consistent with anecdotal evidence that the Attorney-General's Chambers (AGC) is more likely to put forward junior lawyers as lead counsel to gain experience, whereas private clients are more likely to demand that senior lawyers take the lead in the hope of obtaining the best outcome.

Party type	**Mean experience of lawyer (years)**
Partnerships	27.0
Individual	23.7
Association	21.9
Corporation	21.4
Government	13.0
Average	**21.4**

Table 1 — Average years of experience of lawyer by client.

The focus on lead counsel enables a clearer comparison in the various measures of lawyer 'quality', though the reality is that much of the work may be done by other counsel appearing — and, indeed, by lawyers not appearing. In 434 of the cases, the number of counsel appearing for both sides was recorded and this figure was used to examine the significance of team size.

C. *Outcomes*

1. *Overall Results*

Plaintiffs/appellants won in a total of 36% of cases; lost in 47% of cases, effectively tied in 6% of the cases, with results being unclear in 11% of the cases. (See Figure 4.)

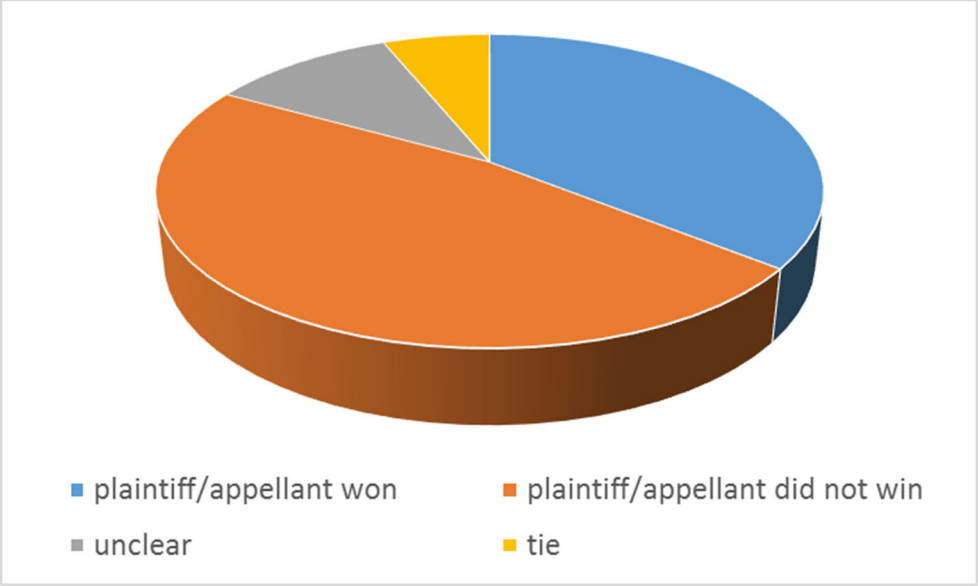

Figure 4 — Overall success rates.

Table 2 breaks down the success rates before the Court of Appeal and High Court. When gathering data, an attempt was made where possible to identify a clear 'winner'. Where it appeared that the result treated both parties equally, these were coded as a tie. For procedural matters that did not indicate a clear winner or loser, these were coded as unclear. Both the latter categories were excluded from analysis of success rates as measured by wins vs losses.

	Court of Appeal		High Court	
Plaintiff/Appellant Won	97	25%	137	49%
Plaintiff/Appellant Lost	195	50%	123	44%
Tie	23	6%	19	7%

Unclear	73	19%	0	0%
Totals	**388**	**100%**	**279**	**100%**

Table 2 — Success rates before the Court of Appeal and High Court.

2. *Raw Percentage of Wins*

A simple analysis of the percentage of wins yields some interesting results. Overall success rates seem broadly to correlate with size of law firms, with the Singapore Government arguably functioning as the biggest such firm. AGC has a staff of more than 600 and, unlike government legal services in many jurisdictions, offers competitive salaries comparable to work in private practice; the vast majority of Government cases are handled by fulltime employees.[97] Table 3 shows the success rates of law firms with more than 20 appearances in the dataset. Because of the large number of criminal cases in which the Government appears, it is separated from non-criminal matters — yet continues to win in a high percentage of cases.

'Big 4' firms refer to the four largest firms in Singapore: Allen & Gledhill (443 lawyers), Rajah & Tann (300 lawyers), WongPartnership (300 lawyers), and Drew & Napier (250 lawyers). Other firms are categorized into large (more than 30 lawyers but fewer than 200[98]), medium (6 to 30 lawyers), and small (1-5 lawyers).

Firm	Cases	Wins	Success Rate	Type of Firm
A	34	25	74%	Govt (non-crim)
B	131	87	66%	Govt (crim)
C	49	32	65%	Big 4 Firm
D	51	27	53%	Big 4 Firm
E	68	35	51%	Big 4 Firm
F	47	23	49%	Large (>30)
G	78	32	41%	Big 4 Firm
H	22	9	41%	Large (>30)
I	40	15	38%	Large (>30)
J	33	10	30%	Large (>30)
K	22	4	18%	Medium (6-30)

Table 3 — Success rates by law firm (of those with more than 20 resolved cases).

[97] See Annual Report (Attorney-General's Chambers, 2018). On Singapore Government salaries, see generally Benjamin TZE Ern Ho, 'Power and Populism: What the Singapore Model Means for the Chinese Dream' (2018) 236 China Quarterly 968.

[98] One firm had 200 lawyers (Dentons Rodyk & Davidson LLP), while the next largest firm had 100 lawyers (Shook Lin & Bok LLP).

The high performance of Government and larger firms is also supported by examining the win-loss ratio — that is, the percentage of wins out of cases with a clear win or lose result — in various match-ups. The Government outperforms the average against almost all counterparties. Table 4 shows the results, with above average results indicated in green. For clarity, the table separates out the number of 'wins' from the perspective of the plaintiff/appellant and defendant/respondent — though, based on the binary approach adopted here, a win for one is by definition a loss for the other. In addition to Big 4, Large, Medium, and Small law firms, the table includes litigants-in-person who acted on their own behalf. As can be seen, the only exception where Government underperforms is in the three cases brought against Big 4 firms within the study period. That result may be anomalous, but draws attention to the relatively low number of cases that Government brings against Big 4 firms and vice-versa. Indeed, the biggest of the Big 4 firms (Allen & Gledhill) did not appear against Government at all in the two year period of the study.

Pl/App vs Def/Resp	Cases	Pl/App Wins		Def/Resp Wins	
Govt vs Big 4	3	0	0%	3	100%
Govt vs Large	5	5	100%	0	0%
Govt vs Medium	22	16	80%	4	20%
Govt vs Small	31	21	72%	8	28%
Govt vs Person	9	2	67%	1	33%
Big 4 vs Govt	7	1	20%	4	80%
Large vs Govt	19	3	21%	11	79%
Medium vs Govt	23	3	16%	16	84%
Small vs Govt	24	3	18%	14	82%
Person vs Govt	22	0	0%	20	100%
Average Success Rate	**165**	**54**	**40%**	**81**	**60%**

Table 4 — Success rate in cases where Government is a party. Green cells indicate above average performance.

Excluding Government cases, Big 4 firms significantly outperform large, medium, and small firms, with the effect being greater against the smaller firms, as shown in Table 5.

Pl/App vs Def/Resp	Cases	Pl/App Wins		Def/Resp Wins	
Big 4 vs Person	5	4	100%	0	0%
Big 4 vs Small (1-5)	14	8	73%	3	27%
Big 4 vs Med (6-30)	26	15	75%	5	25%
Big 4 vs Large (>30)	33	18	58%	13	42%

Big 4 vs Big 4	30	15	60%	10	40%
Large vs Big 4	36	13	42%	18	58%
Med vs Big 4	33	9	32%	19	68%
Small vs Big 4	30	9	33%	18	67%
Person vs Big 4	1	0	0%	0	100%
Average Success Rate	**208**	**91**	**51%**	**87**	**49%**

Table 5 — Success rate by law firm match-up. Green cells indicate above average performance.

This can be represented visually in a scatter graph. The x-axis in Figure 5 reflects the relative size of the firm representing the plaintiff/appellant: leftmost is a litigant-in-person against a Big 4 firm; the mid-point is one Big 4 firm against another; while the rightmost is a Big 4 firm against a litigant-in-person. The y-axis represent the percentage of wins. The size of the bubble reflects the number of cases.

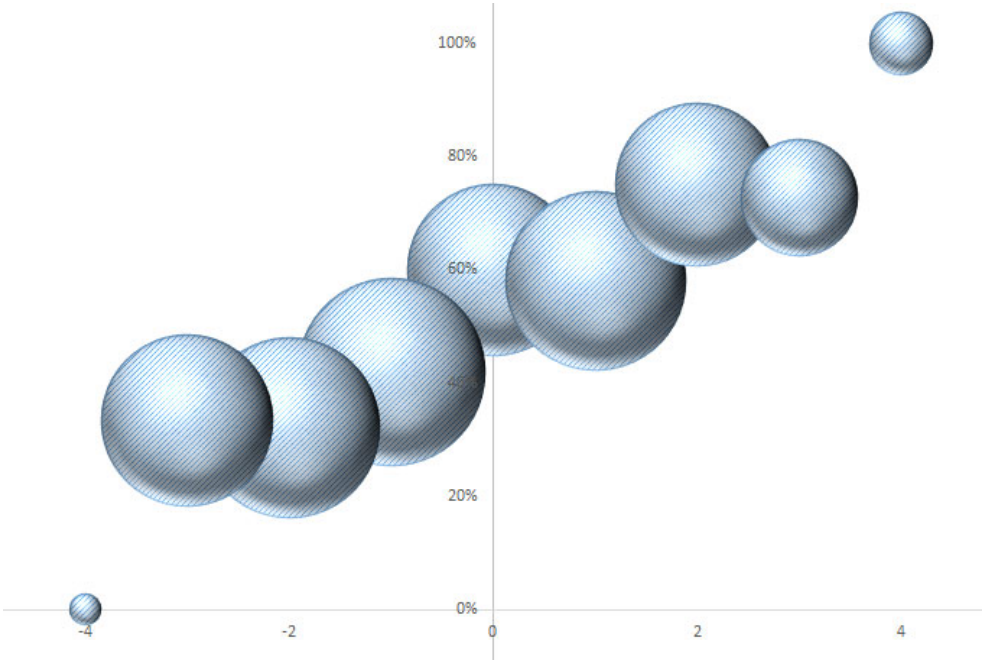

Figure 5 — Success rate by relative size of firm. X-axis indicates relative size of firm representing plaintiff/appellant, with a higher number indicating larger relative size. Y-axis represents success rate. Size of bubble reflects number of cases.

Another interesting observation from Table 5 is that the success rate for plaintiffs/appellants and defendants/respondents is approximately 50 percent. This suggests some support for the Priest-Klein thesis that in a rational system, litigation outcomes should approach that figure.[99] (The comparable

[99] See above n 88 and accompanying text.

number in Table 4 departed from the 50 percent figure, perhaps skewed by the significant number of cases brought by litigants-in-person that were found to be unmeritorious.)

Relative success of larger firms may be due in part to the resources that can be deployed in fighting a case. A more direct measure of that is the number of lawyers appearing on behalf of a client. This was not recorded in all of the cases, but does appear to correlate with successful outcomes — consistent with earlier studies.[100] Table 6 shows the difference in number of counsel for the plaintiff/appellant as compared to the defendant/respondent. A positive number indicates that the former had that many more lawyers than the latter. The largest number of lawyers were two cases with five lawyers on each side; the greatest difference in representation where a clear result was reached concerned a medical negligence case in which a plaintiff was represented by two lawyers against a team of six. (The plaintiff lost.)

Number of Counsel Pl/App > Def/Resp	Cases	Pl/App Wins		Def/Resp Wins	
3	3	2	67%	1	33%
2	26	18	69%	8	31%
1	100	63	66%	33	34%
0	181	101	58%	74	42%
-1	87	43	52%	39	48%
-2	30	16	55%	13	45%
-3	5	3	60%	2	40%
-4	2	0	0%	1	100%
Average Success Rate	**434**	**246**	**59%**	**171**	**41%**

Table 6 — Success rate by difference in number of counsel appearing for the respective parties. Green cells indicate above average performance.

Once again, these results are clear when presented visually. Figure 6 is a scatter graph showing success rates as compared with relative size of legal team. As before, the size of the bubble indicates the number of cases.

[100] See above section II.B.7.

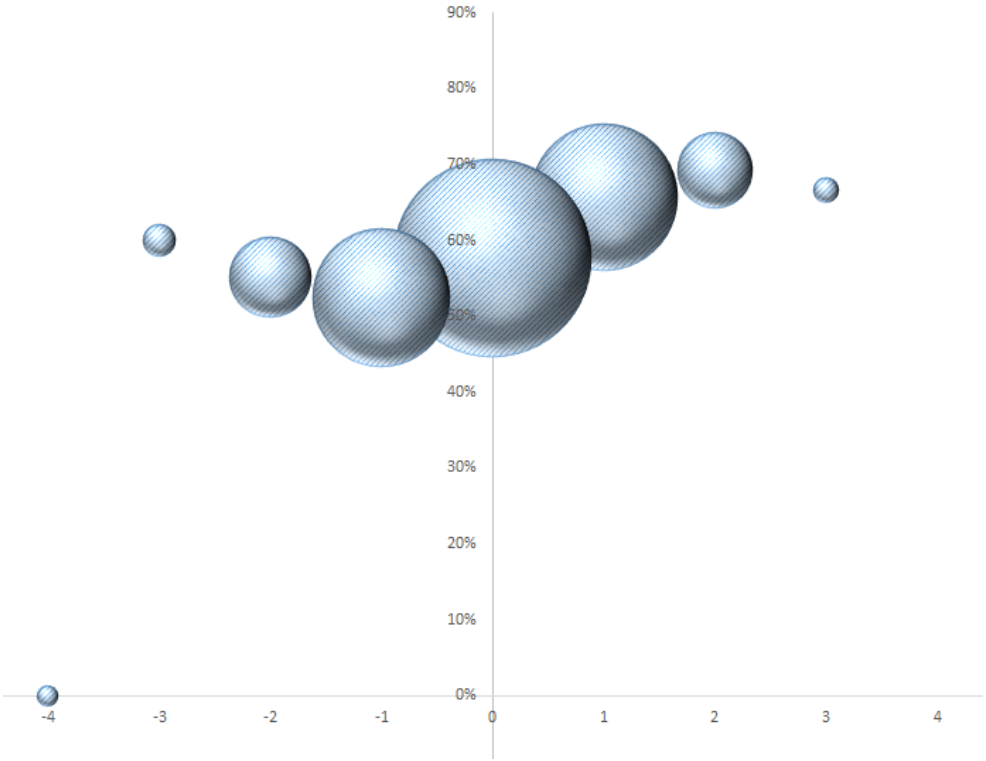

Figure 6 — Success rate by relative number of lawyers appearing. X-axis indicates difference in number of lawyers representing plaintiff/appellant as compared with defendant/respondent, with a positive number indicating more lawyers and a negative number indicating fewer. Y-axis represents success rate. Size of bubble reflects number of cases.

The success rate of individual lawyers is harder to gauge. Sixteen lawyers appeared ten or more times, all of whom had between 16 and 30 years of experience. (See Table 7.)

Lawyer	Cases	Wins	Success Rate	Years of Practice	SC?
A	10	8	80%	16	
B	11	8	73%	22	SC
C	18	11	61%	17	SC
D	10	6	60%	30	SC
E	13	7	54%	25	
F	12	6	50%	25	
G	12	6	50%	22	
H	10	4	40%	27	SC
I	17	6	35%	29	SC

J	21	7	33%	23	
K	12	4	33%	27	
L	25	8	32%	28	SC
M	12	3	25%	21	SC
N	23	4	17%	16	
O	10	1	10%	19	
P	10	1	10%	23	SC

Table 7 — Success rate by individual lawyer.

An interesting question is whether Senior Counsel outperform non-Senior Counsel. Past studies suggest that one might expect them to do so.[101] The data in Table 8 suggests that, on average, Senior Counsel in Singapore outperform the average as defendants/respondents, but *not* as plaintiffs/appellants. This may be due to selection bias, with Senior Counsel being given more complex matters. The sample size is relatively small, however.

Pl/App vs Def/Resp	**Cases**	**Pl/App Wins**		**Def/Resp Wins**	
SC vs SC	48	19	56%	15	44%
SC vs non-SC	53	19	43%	25	57%
non-SC vs SC	59	20	42%	28	58%
non-SC vs non-SC	520	222	49%	229	51%
Average Success Rate	680	280	49%	297	51%

Table 8 — Success rate by Senior Counsel vs non-Senior Counsel match-ups. Green cells indicate above average performance (yellow); red cells indicate below average performance (yellow).

A further interesting finding is that although women appear as lead counsel significantly less often than men (see section IV.B, above), they outperform the average. Table 9 shows that women are statistically more likely to win their cases, in particular when they appear on behalf of a plaintiff/appellant.

Pl/App vs Def/Resp	**Cases**	**Pl/App Wins**		**Def/Resp Wins**	
Men vs Men	505	208	47%	233	53%
Men vs Women	90	32	48%	34	52%
Women vs Men	80	37	57%	28	43%
Women vs Women	5	3	60%	2	40%
Average Success Rate	680	280	49%	297	51%

Table 9 — Success rate by gender. Green cells indicate above average performance (yellow). For some cases it was not possible to identify gender. Percentage of wins excludes outcomes that were tied or indeterminate.

[101] See section II.B.3.

Anecdotally, this result may be due to the smaller number of women staying in the profession being of higher average quality than the men.[102] A proper analysis of this phenomenon is beyond the scope of the present article, though it echoes findings in various jurisdictions about the barriers to women in private practice in general and litigation in particular.[103]

Given the support in other studies for a correlation between experience and success,[104] it was expected that a similar finding would emerge in Singapore. On the contrary, the percentage of wins as compared with the difference in years of experience suggests that the opposite may be the case. Table 10 shows the success rate broken up by difference in years of experience of the lead counsel. The number in the leftmost column indicates a range of years by which the plaintiff's or appellant's lawyer has greater experience (as measured by years in practice since qualification) than the defendant's or respondent's lawyer.

[102] Confidential interviews.

[103] See further Fiona M Kay, Stacey L Alarie, and Jones K Adjei, 'Undermining Gender Equality: Female Attrition from Private Law Practice' (2016) 50 Law & Society Review 766; Hilary Sommerlad, '"A Pit to Put Women in": Professionalism, Work Intensification, Sexualisation and Work–Life Balance in the Legal Profession in England and Wales' (2016) 23 International Journal of the Legal Profession 61; Joyce S Sterling and Nancy Reichman, 'Overlooked and Undervalued: Women in Private Law Practice' (2016) 12 Annual Review of Law and Social Science 373.

[104] See section II.B.2.

Years of Experience Pl/App > Def/Resp	Cases	Pl/App Wins		Def/Resp Wins	
36-40	2	1	50%	1	50%
31-35	5	0	0%	4	100%
26-30	3	1	100%	0	0%
21-25	19	7	39%	11	61%
16-20	26	6	24%	19	76%
11-15	44	17	44%	22	56%
6-10	71	32	52%	29	48%
1-5	103	40	47%	45	53%
0-0	24	7	35%	13	65%
-1-5	111	45	51%	44	49%
-6-10	67	35	57%	26	43%
-11-15	51	24	55%	20	45%
-16-20	34	14	50%	14	50%
-21-25	22	17	81%	4	19%
-26-30	7	6	100%	0	0%
-31-35	2	0	0%	1	100%
-36-40	2	2	100%	0	0%
-41-45	1	1	100%	0	0%
Average Success Rate	**594**	**255**	**50%**	**253**	**50%**

Table 10 — Success rate by difference in years of experience (as measured in years since passing the bar). Green cells indicate above average performance.

These results can be more clearly seen when plotted on a scatter graph. Figure 7 shows the success rates (as a raw percentage of wins for cases in which there was a clear result) by relative experience of the lead counsel for the plaintiff/appellant. The size of the bubbles reflects the number of cases, to take account of outlier examples with small sample sizes. If greater experience translated to more success, one would expect the trend to indicate a rising percentage of wins from left to right, as the lawyer's relative experience increases. This was the trend, for example, when size of law firm and size of legal team were plotted in Figure 5 and Figure 6 Instead, we appear to see the opposite.

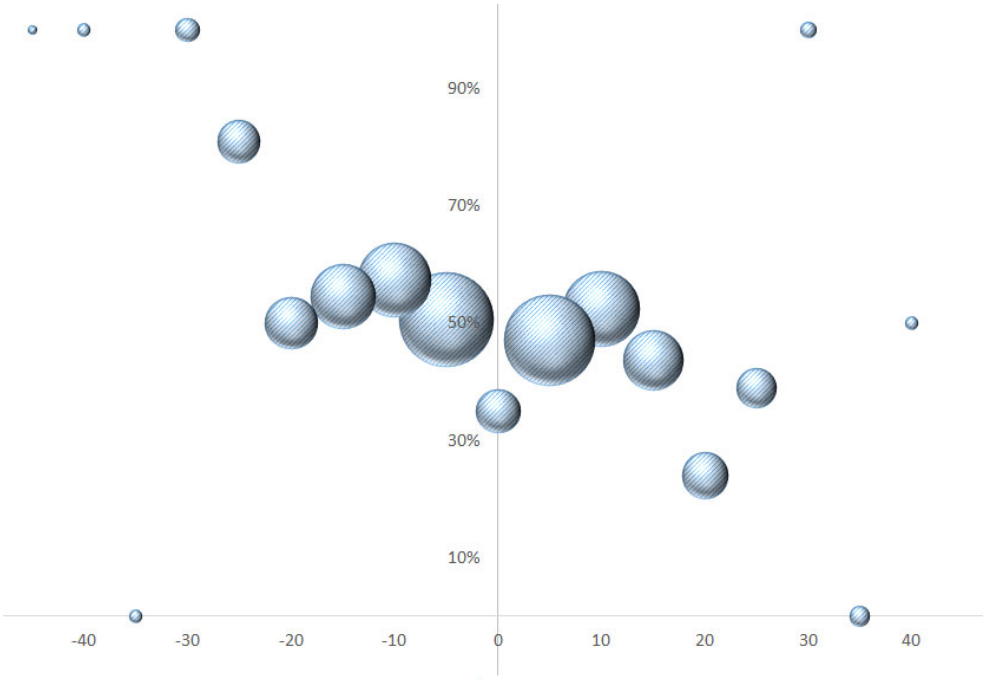

Figure 7 — Success rates of plaintiff/appellant by relative years of experience as compared with defendant/respondent. X-axis indicates difference in years of experience for the lead counsel representing plaintiff/appellant as compared with defendant/respondent, with a positive number indicating more experience and a negative number indicating less. Y-axis represents success rate. Size of bubble reflects number of cases.

This counterintuitive finding led to a more detailed examination of the impact of the variable experience through a regression analysis.

3. *Regression Analysis*

Table 11 shows the regression of 'Appellant wins' dummy variable on years since qualification at the time of ruling.[105] This confirms that experience (years in bar) is negatively correlated with winning the case. There may be two reasons for this result: (i) lower effectiveness of experienced lawyers; or (ii) adverse selection of hard cases to experienced lawyers.

To control for selection extra covariates were introduced. First, model (2) added dummy variables indicating if the appellant and respondent were Government entities. As noted earlier, the Government wins a higher number of its cases and the 'experience effect' attenuates. As shown in Table 1, Government also tends to use less experienced lawyers, so one explanation for this result might be that Government cases are overall easier to win.

[105] Many thanks to Przemysław Jeziorski for his work on the regression analysis section of this article.

To explore the relevance of experience further, it was disaggregated into experience groups, to determine whether there was a non-linear effect of experience on the probability of winning. That would be consistent with intuition: even if more experienced lawyers do win more often, we would not expect that to continue to increase indefinitely, with the very oldest lawyers being the most successful. Indeed, the effect is non-linear. For the present study, the most inexperienced lawyers (less than 5 years in practice) winning more often, while very experienced lawyers (30+ years in bar) win less often; all lawyers in between win with similar probabilities. This may be due to the most junior lawyers being given relatively easy cases to present. To further control for quality of representation we included Big 4 dummies. Big 4 effects are highly positive and statistically significant. This confirms that Big 4 lawyers win more often[106] and is consistent with: (i) Big 4 lawyers having higher efficacy;[107] or (ii) Big 4 firms being selected into easier cases. Overall, the two selection stories go in opposite directions, suggesting that the 'efficacy effect' is larger than selection for cross-firm comparison, and selection effect is larger for cross-lawyer comparison.

Next, to control for heterogeneity of case assignment by complexity we used word count in the judgment — a proxy for the complexity of a given case — as an instrument for appellant's choice of representation (Big 4 dummy). The instrument is valid under the assumptions that case complexity is not directly related with the probability of winning an appeal,[108] while it would affect the choice of the representation. The Big 4 effect is large and statistically significant, but it is also quite noisy so we are unable to sign the bias.

Lastly, we use the fact that we observe the same cases multiple times, at the original ruling and at the appeal. We use case fixed effects to control for unobserved case heterogeneity. This estimate can be interpreted causally as long as no new information is revealed after the original ruling.[109] We observe that that the Big 4 effect is gone; while negative, the experience effect persists. This means that that either experienced lawyers are indeed less

[106] See also Table 5.

[107] The reasons for higher efficacy might be linked to the quality of personnel, access to greater resources, more institutional experience, etc. Further detailed study would be required to analyse this effect.

[108] Note that it is possible that Big 4 firms may have an advantage in managing more complex cases given the greater resources that may be available as compared to smaller firms..

[109] Note that it might be arguable that the first instance decision could be construed as new information, notably findings of fact and law that shape the manner in which an appeal is presented. For the purposes of this study, however, it is assumed that an appellate decision to uphold or overturn an earlier decision is effectively a statement that that earlier decision should have been decided differently.

effective, or that the selection of lawyers operates using new information revealed after the original case ruling. The latter would be consistent with a considerable proportion of clients that switch lawyers after the first ruling.

	(1)	(2)	(3)	(4)	(5)	(6)
	App won	App won	App won	App won	App won	App won
App Exp (yrs)	-0.00807***	-0.00533**			-0.000377	-0.0186***
	(0.00254)	(0.00265)			(0.00428)	(0.00653)
Resp Exp (yrs)	0.00740***	0.00599**			0.00504	0.00524
	(0.00260)	(0.00259)			(0.00348)	(0.00749)
app_gov		0.207***	0.186**	0.216***	0.298**	
		(0.0774)	(0.0810)	(0.0802)	(0.135)	
res_gov		-0.238***	-0.239***	-0.254***	-0.323***	
		(0.0823)	(0.0828)	(0.0815)	(0.0980)	
App Exp 5-9			-0.162	-0.237		
			(0.160)	(0.157)		
App Exp 10-19			-0.186	-0.222*		
			(0.136)	(0.134)		
App Exp 20-30			-0.191	-0.219*		
			(0.133)	(0.131)		
App Exp 30+			-0.307**	-0.306**		
			(0.144)	(0.141)		
Resp Exp 5-9			-0.106	-0.0682		
			(0.207)	(0.203)		
Resp Exp 10-19			0.0933	0.124		
			(0.189)	(0.186)		
Resp Exp 20-30			0.0695	0.0980		
			(0.188)	(0.184)		
Resp Exp 30+			-0.168	-0.188		
			(0.192)	(0.188)		
app_big4				0.284***	0.963**	0.0792
				(0.0608)	(0.457)	(0.157)
res_big4				-0.0431		
				(0.0560)		
Constant	0.515***	0.485***	0.788***	0.770***	0.294*	0.779***
	(0.0838)	(0.0874)	(0.143)	(0.141)	(0.177)	(0.251)
Case fixed effects	no	no	no	no	no	yes
N	490	490	490	490	382	480

Standard errors in parentheses
* p<0.1, ** p<0.05, *** p<0.01

Table 11 — Regression analysis of outcomes by years of experience.

V. CONCLUSION

Correlation is not cause. These findings have virtually no significance for analysing a single case, and in any event may be more reflective of the resources that go into litigating a case than the factors determining its outcome. As discussed earlier, parties may retain the services of a more experienced lawyer or a more expensive firm because they have greater access to resources, are confident of the outcome, or have other interests at work. A firm or a lawyer may take on a case for economic reasons, because it will burnish his or her credentials, or for other reasons. Most importantly, this study does not take account of the very large number of cases that settle before ever reaching the courtroom.

That said, the formal position described in Part I of this article — that lawyer quality is marginal to the outcome of a case — is contradicted by both the market for legal services and the data presented in this and other studies. Those other studies, discussed in Part II, offer diverse insights into possible factors affecting success, most prominently including the resources of clients and the experience of lawyers.

The study of Singapore's Supreme Court supports the former but not the latter. To the extent that client resources affect choice of law firms, there is a correlation between size of law firm and success in court. In the unusual context of Singapore, the Government operates like a very well-resourced client and the largest law firm, outperforming all others. The importance of resources is supported by the fact that larger legal teams also tend to be more successful.

With regard to individual lawyer experience, it was found that more experienced lawyers appear more often in the Supreme Court. The Singapore Government uses lawyers who are, on average, less experienced than other clients, though this has not adversely affected its success rate. Indeed, there is some evidence that more experienced lawyers (up to a point) are *less* successful in winning cases, though this may be due to them being given more complex cases to handle in the first place. An additional finding was that though women are severely underrepresented in appearances before the Supreme Court, they outperform men in those cases in which they do appear.

These findings suggest that the market for justice in Singapore is broadly rational: it would be odd, for example, if the firms able to charge the highest fees were not more successful than smaller firms. This need not mean that they outperform smaller firms in every case, however, as larger firms may be more selective in the cases that they bring to court. At the same time, even within large firms it is rational to give more complex cases to more experienced lawyers, with the result that the individual success rate of those lawyers may fall.

As noted in the introduction, this study makes no prediction about individual cases in which the lawyers' first duty is to the court. As a snapshot of the larger legal services market, however, it does offer useful insights into how that market operates.