

DO TITLE HOLDERS ALWAYS WIN IN THE OTTOMAN COURTS?¹²



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ABSTRACT

In this study, the relationship between litigation success and the titles of the parties (plaintiff and defendant) in Ottoman courts was examined. The registers of Galata and Üsküdar courts from the center and Konya and Kütahya courts from the province between the period 1800-1840 were used. Making use of the 50% plaintiff win rate hypothesis and the factors affecting this rate in the law and economics literature, the effect of being a titleholder on litigation success is investigated by regression analyses. According to the first model, while being a title holder has a significant effect on the probability of success considering all observations and in the provincial courts, it is not valid in the center. In the second model, in which titles are categorized in more detail, variables such as representation, the burden of proof, and evidence are added as controls besides the gender and religion of the parties. Accordingly, elite titles and the burden of proof seem to be the important factors that affect the probability of success to deviate between parties to cases and across regions.

Keywords: Ottoman courts, win rate, title holder

JEL Codes: N45, K49, P48

Scope: Economics

Type: Research

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¹ It has been declared that this study complies with the ethical rules.

² This article is based on my Ph.D. thesis of the title “Osmanlı Mahkemelerindeki Sulh ve Davaların Nicel Analizi: Merkez ve Taşra Karşılaştırması (1800-1840)”. Updated data set and different models are used for this article.

OSMANLI MAHKEMELERİNDE UNVAN SAHİPLERİ HER ZAMAN KAZANIYOR MUYDU?



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ÖZ

Bu çalışmada, Osmanlı mahkemelerinde dava kazanma ile dava taraflarının (davacı ve davalı) unvanları arasındaki ilişki incelenmiştir. Merkezden Galata ve Üsküdar, taşradan Konya ve Kütahya mahkemelerinin 1800-1840 tarihleri arasındaki sicil defterleri kullanılmıştır. Hukuk ve iktisat literatüründeki %50 kazanma oranı hipotezi ve bunu etkileyen faktörlerden faydalanarak unvan sahibi olmanın dava başarısına etkisi regresyon analiziyle incelenmiştir. Birinci modelin sonuçlarına göre unvan sahibi olmanın dava kazanma olasılığı üzerinde taşra mahkemelerinde ve bütün gözlemler dikkate alındığında anlamlı bir etkisi varken, merkezde böyle bir etki görülmemiştir. Unvanların daha detaylı sınıflandırıldığı, cinsiyet ve dinin yanısıra ispat yükü, delil ve vekil değişkenlerinin de eklendiği ikinci modelde ise yüksek sınıf (elit) unvanlar ve ispat yükü, hem dava tarafları hem de bölgeler arasındaki bu farklılığın oluşmasında önemli etkenler olarak gözükmektedir.

Anahtar Kelimeler: Osmanlı Mahkemeleri, kazanma oranı, unvanlı

JEL Kodları: N45, K49, P48

Alan: İktisat

Türü: Araştırma

1. INTRODUCTION

Nobel-winning economist Douglas North asserts that the single most important determining factor of economic performance is the effective enforcement of agreements. North states that this can only be achieved by the courts working with effective and impartial laws to enforce formal rules that will lead to desired sets of behaviors in society (1992, p. 481). Therefore, judicial justice has always been an important issue throughout history even in the field of economics. Law and economics literature suggests no meaningful way to measure justice and fairness (Kuran & Lustig, 2012, p. 637). However, some words can be said about intergroup biases. Whether a certain privileged group has any advantages in winning the cases or not is an important question and this will be the main focus of this study.

Although Ottoman honorific titles do not specify a position in a hierarchical caste system, they certainly signify a differentiation between the socioeconomic status of the titled and untitled ones (Ergene & Berker, 2008; Özer, 2018). Ottoman court records are very careful about specifying the titles of the parties to the litigation. By using this information, we will look at whether honorific title holders as a proxy for higher socioeconomic status win the cases disproportionately and whether there is any regional differentiation in the win rates. If so, what might be the possible reasons behind these?

Ottoman court registers (*siciller*)³ served as a rich source for many fields of study. Although many statistical studies have been carried out using these registers in economic and social history, quantitative studies with econometric models are quite new. These studies are very important as they give us a different perspective on interpreting historical data. In this section, quantitative studies with more advanced techniques on Ottoman court registers especially on litigation success are summarized, and then how this study can contribute to the relevant literature is highlighted.

Ottoman registers can be analyzed by three different methods, namely quantitative, narrative historiography, and microhistory (Ze'evi, 1998, pp. 38-42). Ze'evi discusses the potential problems of these methods and their suitability for registers through different examples and proposes possible solutions. According to the author, one of the most important problems of the quantitative method is

³ The Ottoman Court Registers were a collection of official documents produced by the Ottoman Empire's court system. These records documented legal proceedings and transactions, including lawsuits, settlements, admissions, sultanic orders, notarial registrations, transfers, and contracts, etc. The Ottoman Court Registers were created during the Ottoman Empire's six centuries of existence and are important source of information about the empire's legal and social systems, as well as its economic and political history. The records were written in Ottoman Turkish.

the misrepresentation of the main population by the chosen sample. In addition, another problem is how accurately the price, wage, and quantity information recorded in the registers reflect the real values. Because in many cases, it is possible and advantageous for the parties to distort the value of the money given to the bride (*mehr*), sale prices or wages, etc. for case records (Bozkurt, 2011, pp. 73-74).

While it should be noted that these criticisms are not just specific to the quantitative method (others may have the same problem), it would be appropriate not to present the results of the quantitative studies as superior or ultimate. Better to say that they may provide a different perspective by relating their findings to the studies conducted with other methods on the subject. As in other historical studies, every new finding or piece of information has the potential to change our thoughts on the subject.

There is an increasing number of studies that use advanced techniques to analyze Ottoman historical data. Below there will be a summary of key findings of the quantitative studies about litigation success using Ottoman court records.⁴

The first quantitative study on this subject was done by Kuran and Lustig (2012). The authors, who systematically examined the Istanbul court records, argued that the courts had a biased attitude towards the *dhimmi*s (non-Muslims), based on the high win rates in the cases of the *dhimmi*s against the Muslims. The authors reason this argument by saying because the *dhimmi*s know they will face a biased decision by the court they were taking stronger cases to the court, which resulted in higher win rates (Kuran & Lustig, 2012).

According to Kuran (2004), for this reason, *dhimmi*s preferred western law, which was more advantageous for them and gained great economic advantages in the 19th century. Muslims, on the other hand, had to wait for the establishment of secular courts and the enactment of new commercial laws to improve their trade and financial transactions (Kuran, 2018).

Coşgel and Ergene (2014a) found the average win rate in the Kastamonu court as 47% by applying the selection and the fifty percent win rate hypotheses⁵ developed by Priest and Klein. However, these rates vary according to the type of cases (civil and criminal) and periods. The authors also grouped the factors affecting the fifty percent win rate under four categories and showed how they

⁴ For a broader literature review on quantitative studies centered on registers see (Özer, 2020, pp. 19-24)

⁵ The selection hypothesis means that parties settle the dispute if there was a clear winner. If the outcome is difficult to predict, then the dispute is taken to litigation. Since the disputes that turn into litigation are selected in this way, it is expected that the win rate will approach fifty percent. For more detailed information. See Section 2.

affect litigation and settlement decisions.

In another study, the authors investigated whether the disputes that turned into litigation were randomly or systematically selected from the total disputes (Coşgel & Ergene, 2014b). The results show that disputes which turn into lawsuits are systematically selected according to the selection principle. Therefore, the types of parties (single person, group), gender, and titles affect the decision to file a lawsuit. In addition, the regression results show that the subject of the litigation and the time period also affect the decision to file a lawsuit.

Lastly, they also examined the factors affecting the success rates in disputes that turned into litigation regarding the Kastamonu court records (Coşgel & Ergene, 2014c). Using probit analysis, they showed how the success rates were affected by the characteristics of the litigants. Accordingly, the gender, title, and religion of the litigants affect the win rates. Titled and prominent litigants win the litigations against untitled and less prominent opponents when the former group acted as plaintiffs. However, results are more balanced when the titled ones became the defendant.

This study aims to contribute to this literature at two points. First, a completely different and larger dataset was used to test the litigation success rates based on litigant and case characteristics. This dataset is three times larger than the dataset used in the above studies. Secondly, since the data is obtained from central and provincial courts, it will be possible to make an inter-regional comparison.

2. THEORY

2.1. Fifty Percent Win Rate

The selection hypothesis of Priest and Klein (1984) suggests that under certain assumptions, the win rate in litigations will converge to fifty percent as the rate of disputes that turn into litigation approaches zero. Because litigations are more costly than settlements, the parties take the dispute to litigation only when they have differential expectations about the outcome. For this reason, some of the litigations are won by the plaintiffs and some of them by the defendants, and the average success rate approaches fifty percent. The authors explain this limiting result with the help of Figure 1 below. Let Y^* be the threshold (case quality) for the court to rule in favor of the plaintiff or the defendant. The intervals indicate the disputes brought to the litigation. The size of these intervals varies depending on the expectations of the parties about the outcome. Accordingly, when all the disputes in the range of $[a, a']$ are brought to litigation, plaintiffs' win rates will be higher. But as the number of disputes brought to litigation approaches zero -ranges narrow to $[d, d']$ - the win rates for

plaintiffs and defendants are nearly identical. In the limit, it is seen that these ratios are equal and thus the win rate will converge to fifty percent.

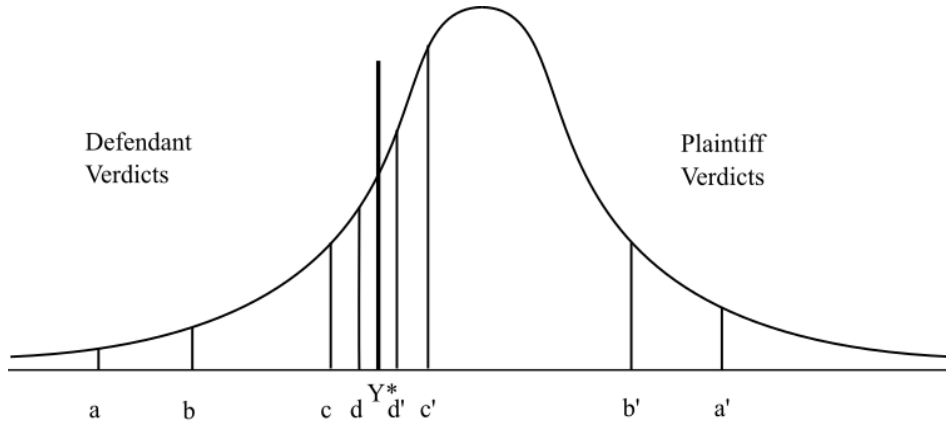


Figure 1: Selection Hypothesis

Reference: (Priest & Klein, 1984, p. 18)

It was stated above that the win rate would approach fifty percent under certain assumptions. There have been many studies that indicate that the win rate will differ from fifty percent as deviated from these assumptions (Coşgel & Ergene, 2016, pp. 254-257; Kessler, Meites & Miller, 1996). Based on these studies, below is a summary of the factors that cause the win rate to deviate from the expected value (fifty percent):

Divergent Expectations about Case Quality: The divergence of the litigants' expectations about the win decision threshold (case quality) causes the litigation win rate to deviate from fifty percent. For example, if one of the parties has some secret information about the case that will turn the case in his favor. This will differentiate his expectation about the threshold of winning the case. In addition, since the probability of winning will increase with this information, there will be a deviation from the expected value of the fifty percent win rate.

Asymmetrical stakes: These refer to the values that will be gained or lost as a result of the lawsuit. Here they are mostly intangible stakes that the first assumption fails to capture. For example, the gross damage of a famous company because of losing a lawsuit to its customer cannot be explained only by financial losses. The firm's intangible losses will be greater than its customers. For this reason, since such firms will enter lawsuits in which they are strong, their win rates will increase and there will be deviations from the expected win rate of fifty percent.

Differential Knowledge about Trial Procedures and Relative Ability: This assumption does not refer to information about the case, but to the difference of knowledge and competencies about litigation processes and evidence mechanisms. For example, having different levels of knowledge about how the litigation process takes place and what the valid evidence is, will cause the win rates to deviate in favor of the knowledgeable party.

2.2. Predictions

Assuming that these three factors are the same for both litigants, as the number of disputes turned into litigation approaches zero, the plaintiff's win rate will converge to fifty percent. So, considering these assumptions, what outcomes can be expected for the cases under investigation? Before examining this statistically and econometrically, we can make some educated guesses to give an idea.

Considering the first factor, assuming that titled litigants have more accurate expectations about litigation and the decision threshold, their win rates are expected to increase. In other words, since titled litigants, for example, have a higher chance of accessing private information about the case that cannot be reached by the other party, it is expected that their win rate will be higher.

Secondly, due to the high costs incurred by titled litigants for their fame/honor (stake) when they lose the case, they will only take the disputes to litigation if they are very confident about the outcome. So, it is expected that their win rate will be more than average.

Thirdly, perhaps the most important factor in terms of the observations under examination is the differentiation of knowledge levels about the litigation processes. Assuming that those with titles have higher competence in litigation processes and the functioning of evidence mechanisms, it is expected that their win rate will increase. These predictions will be tested in Section 4 and a cross-regional comparison will be carried out.

Finally, other than these three factors, case types are extremely important for the win rates to deviate from the norm. Siegelman and Waldfogel (1999) tested Priest and Klein's hypotheses using indices obtained from real data for three structural parameters (decision threshold, uncertainty of information about the case, and asymmetric stakes) that affect litigation and win rates. Accordingly, they showed that the case types influence both the litigation and the win rate. Therefore, in the analyses made, case types are controlled by adding them to the model as a fixed effect in order not to affect the results.

3. DATA

3.1. Generating the Data

Figure 2 below shows how data was obtained from a sample register record. The record starts with the name of the court, then usually the neighborhood is specified. After that, the title, name, and father's name of the plaintiff and defendant are mentioned sequentially. Afterward, the claim of the plaintiff and the response of the defendant to it are briefly stated. Finally, the judge's decision is given after the evidence is presented, if any, at the end. As can be seen, the titles are already clearly stated in the text. Gender and religions are derived from the names and the conjunctions like *bin*, *binti*, *veled-i*, etc. meaning son or daughter of. In addition to the fact that the names of the dhimmis are different from those of the Muslims, the term "veled-i" was used only for dhimmis. Then, this information was transformed into categorical variables as in Table 1. After that these categorical (mostly binary) variables are used in the regression analyses.

Figure 2: First two lines of a record from the Konya court (Ottoman and Latin Scripts)

Reference: Konya Court Sijils, register no 68, page 42.

Medine-i Konya'da Tercümân Mahallesi'nde sâkine zâtı ta'rîf-i şer'î ile mu'arrefe olan Âişe binti Abdullah nâm hâtun meclis-i şer'î-i şerîf-i enverde işbu râfî'ü'l-kitâb es-Seyyid el-Hâc İsmâil Ağa bin Ömer nâm kimesne mahzarında ikrâr-ı tâm ve takrîr-i kelâm edip akd-i âtü'z-zikrin sudûruna değîn yedimde mülk...

Translation

In the court of Konya, Âişe binti Abdullah who is identified by the court and resided in the Tercüman neighborhood faced es-Seyyid el-Hâc İsmâil Ağa bin Ömer and acclaimed that this property was on her hand till contract to be mentioned below...

Table 1: Transforming the registry information into categorical data

Court	Plaintiff			Defendant			Winner
	Title	Religion	Gender	Title	Religion	Gender	
Konya	NA	Muslim	Woman	Seyyid, Hac, Ağa	Muslim	Man	Plaintiff
2	0	1	0	1	1	1	1

3.2. Descriptive Statistics and Case Types

A total of 39 registers were examined for this study. Because judges (*kadi*) have different responsibilities other than the judicial ones, numerous estates, guardianship appointments, registrations, contracts, sultanic orders, etc. are to be found in these registers (Aydın, 2015, p. 80). However, only the litigation records were selected and turned into data to be used in the analyses. Since 11 of these registers were transcribed into Latin script with previous studies, they were used while generating the data (Bildik, 2010; Demirkol, 2016; Dumluoğlu, 2010; Kahveci, 2014; Karaca, 2007; Kutluğ, 2006; Özger, 2007; Şahin, 2013; Üçdemir, 2010; Ünlü, 2005; Yıldız, 2010), for the rest Ottoman scripted records are used. In this way, a total of 2,500 litigation records were generated. 553 of these records were excluded from the evaluation as the parties to the lawsuit were multiple litigants. Because the title, religion, and gender of the people forming the group of these multiple litigants cannot be specified. As a result, this study was carried out on 1,947 case records between individual litigants. The detailed distribution of the records subject to the study by the courts is shown in Table 2.

Table 2: Number of Litigations in the Registers

	Number of Registers	First Date	Last Date	Number of Litigation
Galata	5	1800	1840	704
Üsküdar	4	1800	1820	496
Konya	12	1796	1844	434
Kütahya	18	1800	1842	313
Toplam	39	-	-	1,947

For the Konya and Kütahya courts, all existing registers between 1800-1840 were examined. On the other hand, for Galata and Üsküdar, which were chosen as the central courts, registers were selected at 10-year intervals. Since the

number of cases per register in the central courts is quite high, such a method has been followed to obtain a balanced data set for comparisons. The records of the Üsküdar Court were interrupted after 1825. Therefore, only the registers between 1800 and 1820 were selected. These cities and registers were chosen because they represent the diversity within and between the central and provincial courts. This time period was chosen to find a somehow continuously available data before the *Tanzimat* era reforms which changed the legal system drastically. Analyses will be conducted over regions such as the center and province instead of courts. Most of the time inter-regional differentiation is more important than intra-regional ones. On many occasions, Galata and Üsküdar (central) courts are similar to each other while Konya and Kütahya (provincial) courts resemble themselves.⁶

Table 3 shows the distribution of litigants by title, religion, and gender which will be the core variables for incoming models. As seen in the table, the title and religion categories are similarly distributed among the parties (plaintiffs and defendants) (34%-37% and 76%-72%). Men are slightly more involved as defendants than plaintiffs (88%-77%). If we compare the regions; while the title holder ratio in the central courts is 28%, it is 43% in the provinces, and even higher among the provincial defendants (50%). This shows us that holding a title is of quite different prevalence between the province and the center. While the dhimmi participation rises to 35-41% in central courts, it is only around 5-8% in the province. In total, Muslims or men account for approximately 76% of cases. Lastly, men have similar weight in both central and provincial courts no matter whether they acted as plaintiffs or defendants.

Table 3: Distribution of litigants by title, religion, and gender

		Numbers			Ratios		
		Center	Province	All	Center	Province	All
Plaintiff	Titled	337	321	658	0.28*	0.43	0.34
	Muslim	778	706	1484	0.65	0.95	0.76
	Man	922	572	1494	0.77	0.77	0.77
Defendant	Titled	340	376	716	0.28	0.50	0.37
	Muslim	709	690	1399	0.59	0.92	0.72
	Man	1057	658	1715	0.88	0.88	0.88

* Note: The ratio of 0.28 is obtained by dividing the number of titled plaintiffs in the center (337) by the number of all plaintiffs in the center (1200). It means that 28% of the plaintiffs in the center are titled.

⁶ Analyses were also made based on courts and similar results were obtained. In this study, we focused on the center and the provinces since we aimed to make an interregional comparison.

The court records do not specify the case types explicitly. So, observations are categorized into seven categories according to case content: family, criminal, administrative, inheritance, commercial, charitable foundations (waqf), and others that cannot fit into any of these categories. Figure 3 shows how records are distributed according to the case types across courts. We can see that in each region case types distribution of courts resembles each other. This is one of the bases that we analyze the courts together as regions. Two circles inside of the figure, namely Galata and Üsküdar have many commercial (79%-72 %) and some family cases (9%-7%). Üsküdar has proportionately more criminal (8%) and inheritance (4%) cases compared to Galata (3%-3%). However, inheritance and administrative cases are more common in Konya (40%) and Kütahya (33%) courts. The commercial cases ratio drops to 21% in Konya and 33% in Kütahya.

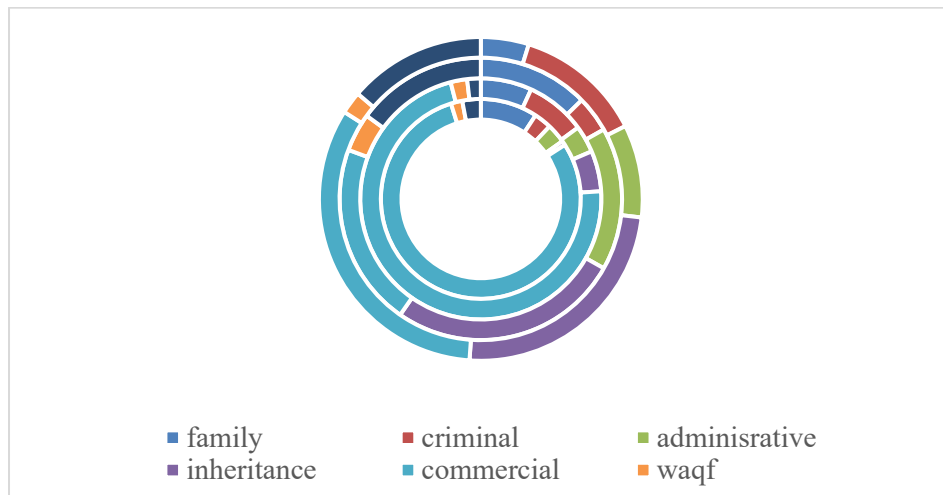


Figure 3: Case type Distribution by Courts (From inside to outside Galata, Üsküdar, Konya, and Kütahya)

If we look at Table 4 for the regions, we see more administrative and inheritance cases in the province than in the center even though the total number of cases is greater. On the other hand, commercial cases dominated the center while the other case types are mostly distributed similarly.

Table 4: Case types by Courts and Regions

	Galata	Üsküdar	Konya	Kütahya	Center	Ratio	Province	Ratio	Total
Family	65	34	55	15	99	5%*	70	4%	169
Criminal	20	40	18	40	60	3%	58	3%	118
Administrative	22	18	71	29	40	2%	100	5%	140
Inheritance	5	27	115	76	32	2%	191	10%	223
Commercial	558	357	91	103	915	47%	194	10%	1,109
Waqf	13	11	19	7	24	1%	26	1%	50
Other	21	9	65	43	30	2%	108	6%	138
Total	704	496	434	313	1200	62%	747	38%	1,947

*Note: Ratios are calculated by dividing the number of cases by the total number of all cases. For example there are 99 family cases in the center which means 5% of all the cases if we divide 99 by 1,109.

4. WIN RATES AND MODELS

In this section, we will look at the plaintiff's win rates across regions and litigant characteristics. If we consider all the observations, the plaintiff's win rate becomes 51% which is nearly the same as predicted by the Priest and Klein hypothesis. However, we see that the win rates differ between the center (58%) and the province (40%) by about twenty percentage points.⁷ The win rates are shown in Table 5. If we look at the win rates by litigant characteristics, we see that they are mostly around the regional averages. However, only the win rate of the titled plaintiff in the province (50%) seems to differ from the region's average (40%). But we will do regression analyses to decide whether this difference is statistically significant or not before commenting on it.

⁷ This is probably because of the case type combination and the prevalence of admissions (acknowledgment/acceptance of the plaintiff's claim by the defendant is called 'admission') across the regions. Because commercial cases dominate the central courts and are generally solved by admissions, win rates become higher in the center.

Table 5: Win rates by Title, Religion, and Gender

	Center	Province	All
Plaintiff			
Titled	0.60	0.50	0.55
Muslim	0.59	0.41	0.50
Man	0.59	0.42	0.53
Defendant			
Titled	0.61	0.43	0.52
Muslim	0.60	0.42	0.51
Man	0.59	0.40	0.52
Total	0.58	0.40	0.51

How the data regarding the title, religion, and gender of the parties to the lawsuit were extracted from the information provided by the register records is shown in Section 3. Using this information Model 1 is constructed without differentiating between titles. The variable is called *Titled* if litigants hold any titles. In Model 2, on the other hand, titles were grouped into elite and non-elite categories.⁸ In addition, titles such as ‘pilgrim’, ‘descendent of the prophet’, and ‘prominent’ are included separately. The register records also contain information about the burden of proof and whether a written document, legal opinion (fatwa), or representative is used in the case. These characteristics of litigation were also included in the analysis with the second model.

$$\text{Model 1: } S_{ip} = \alpha_1 + \alpha_2 T_{ip} + \alpha_3 R_{ip} + \alpha_4 G_{ip} + \alpha_5 T_{id} + \alpha_6 R_{id} + \alpha_7 G_{id} + Y + T + C + \varepsilon_i$$

The dependent variable of the Model 1 (S_i) takes the value of 1 when the plaintiff p wins case i and 0 when he/she loses. In the same way, independent variables such as being a titled (T), Muslim (R), and man (G) take the value of 1; being a woman, dhimmi, and untitled takes on 0. We control these characteristics for both plaintiffs and defendants (p for plaintiffs and d for defendants). We also add year (Y), case type (T), and court (C) fixed effects to the model. Accordingly, the effect of the title, religion, and gender of the parties on winning litigation is to be investigated. In addition, the year, court, and case types were also included

⁸ Classification of the titles is as follows;

Elite titles: master (efendi), sheikh (şeyh), agha (ağa), beg (bey) and pasha (paşa),

Non-elite titles: dervish (derviş), celebi (celebi), hafız (hafız), hodja (hoca), mullah (molla), father (baba), bese (beşe) and craftsman (usta)

Since the titles of pilgrim (hacı), the descendant of the prophet (seyyid), and prominent family (zade) do not fit into these categories, they are discussed separately. For a detailed explanation of the classification of titles, see (Coşgel & Ergene, 2016, pp. 55-60).

in the model as fixed effects to prevent them from affecting the results. Unless otherwise stated, when (probability of) winning litigation is mentioned, it is meant that the plaintiff's probability of winning the litigation following the convention in the relevant literature.

The results of Model 1 are given in Table 6. The coefficient of the variable *Titled* is positive both in the province and among all observations at 1% significance level. If the plaintiff is titled, it positively affects the probability of winning the litigation in all observations and especially in the province, but such an effect does not appear in the center. In addition, if the plaintiff is a Muslim, it negatively affects the probability of the plaintiff's winning when all observations are considered. Being Muslim while acting as a defendant also increases the probability of the plaintiff winning for both regions. From these results, we can infer about the religion variable that Muslims are more inclined to file lawsuits than dhimmis and more likely to lose. Muslims are defeated because they bring disputes that need to be resolved by settlement before coming to formal litigation. On the other hand, we can say that the dhimmis, especially when acting against Muslims, take the disputes to litigation when they feel their cases are strong enough to win.

While being titled affects winning the litigation in the provinces, the lack of a significant effect in the center is the most important finding of this study. We may explain this result in two ways. First, considering the third factor of differential knowledge assumption from the theory section, titles may not provide the title holder with as much knowledge and ability about litigation and legal procedures in the center as it does in the provinces. In other words, an '*efendi*' (an elite title holder) in the center may not have as much knowledge and competence as an '*efendi*' in the provinces about the litigation and evidence mechanisms. A comparative study of probate estates (*tereke*) between these regions in the same period shows that similar title holders' wealth levels at their deaths differentiated significantly between province and center in favor of the former one. This study shows that a similar title holder in the province is 1.5-2 times wealthier than the central counterpart, which resulted in higher socioeconomic status and presumably higher legal capabilities (Özer, 2018). Secondly, regarding the asymmetric stakes assumption, losing litigation as a titled person might be less costly in terms of fame and honor in the center than in the province. Therefore, title holders in the center may not have been as careful as those in the provinces when taking the disputes to litigation. We do not have the information about the possible immaterial (fame and honor) cost of losing a case for the litigants across regions, but we have the burden of proof information which might give a hint about the legal capabilities of litigants for a case.

Utilizing this we can assess how careful the litigants were while taking their disputes to the court. Details of titles and their relation to the burden of proof and evidence will be discussed within the next model.

Table 6: Model 1: The Effects of Title, Religion, and Gender on the Probability of Winning

Variables	Center	Province	All
Plaintiff			
Titled	0.015 (0.042)	0.171*** (0.045)	0.081*** (0.031)
Muslim	-0.037 (0.044)	-0.134 (0.093)	-0.078** (0.038)
Man	0.064 (0.043)	0.000 (0.049)	0.051 (0.032)
Defendant			
Titled	0.012 (0.040)	-0.021 (0.041)	-0.012 (0.029)
Muslim	0.070* (0.043)	0.196*** (0.075)	0.111*** (0.037)
Man	0.011 (0.048)	0.015 (0.062)	0.036 (0.038)
Observation	1,197	746	1,943
R²	0.055	0.157	0.093
Year FE	x	x	x
Case Type FE	x	x	x
Court FE	x	x	x

Robust standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.10

Model 2: $S_{ip} = \beta_1 + \beta_2 ET_{ip} + \beta_3 NET_{ip} + \beta_4 P_{ip} + \beta_5 DP_{ip} + \beta_6 PR_{ip} + \beta_7 R_{ip} + \beta_8 G_{ip} + \beta_9 BP_{ip} + \beta_{10} WD_{ip} + \beta_{11} LO_{ip} + \beta_{12} REP_{ip} + \beta_{13} ET_{id} + \beta_{14} NET_{id} + \beta_{15} P_{id} + \beta_{16} DP_{id} + \beta_{17} PR_{id} + \beta_{18} R_{id} + \beta_{19} G_{id} + \beta_{20} WD_{id} + \beta_{21} LO_{id} + \beta_{22} REP_{id} + Y + T + C + \varepsilon_i$

Model 2 is constructed like the first model. Its dependent variable (S_i) takes 1 if the plaintiff wins, and 0 otherwise. Furthermore, the title categories are detailed as elite (ET), non-elite titles (NET), pilgrim (P), the descendant of the prophet (DP), and prominent family member (PR). Besides religion (R) and gender (G), the effects of the burden of proof (BP), evidence (written document (WD), legal opinion (LO)), and use of representation (REP) on the probability of winning were examined. i is used for the case subscriptive, p for the plaintiff, and d for the defendant. Y , T , and C are for the fixed effects of year, case type, and court respectively.

According to the results of Model 2 in Table 7, being an elite-titled plaintiff increases the probability of winning the litigation, and being a non-elite-titled defendant works in the same direction. This implies that the main contribution of the titles to winning the litigation comes from the elite titles. Although the variable *Elite titled* has a positive significant coefficient in the province and all observations, it has no effect in the center same as the previous model. It is seen that the title of the *Descendant of the Prophet* is important only for the plaintiffs in the province. While the titles of *Pilgrim* and *Prominent* do not have a significant effect on the plaintiff, it seems that the defendant's title of *Prominent* has a negative effect on the probability of winning. The influence of the parties' religions was consistent with Model 1. In other words, while the plaintiff's being a Muslim decreases the probability of the plaintiff's winning in all observations, being a Muslim defendant increases it. While the use of representation does not have an effect for the plaintiffs, the probability of winning the case decreases in cases where the defendants use representatives.

The other two critical results from this model are the importance of evidence (written document and legal opinion) and the burden of proof. Presenting written document has all positive significant coefficients for the plaintiff and negative for the defendant. Two results support each other and say anybody who has the written evidence is more likely to win the case. The legal opinion works like a written document. However, because there are a few numbers of legal opinions (3 in the center, 67 in the province) in the center we should disregard coefficients in the center. As a result, we can say those litigants who are more knowledgeable about the litigation process and evidence mechanisms are more likely to win as the third assumption suggests.

The other critical result is related to the burden of proof. There is almost a universal rule that is also valid in Islamic jurisprudence and consequently in Ottoman courts: "the claimant is obliged to prove his/her claim". This responsibility is called the burden of proof and is always borne by plaintiffs. If the defendant responds with a counterclaim⁹ (def), the burden of proof is transferred from the plaintiff to the defendant (plaintiff of the counterclaim). So, the burden of proof is included in the model only once to evade multicollinearity. According to the results, when the burden of proof is on the plaintiff it negatively

⁹ For example, when the plaintiff Ayşe files a lawsuit claiming that she lent some money to the defendant Ali. If Ali denies the claim of borrowing money from her, the burden of proof falls on Ayşe. If Ali accepts the debt (admission-*ikrar*), the case will be concluded in Ayşe's favor without any burden of proof. However, if Ali admits that he had borrowed money but claims that he has already paid his debt, this is called a counterclaim (def). In this case, the burden of proof will be transferred to Ali, the plaintiff of the counterclaim.

affects the probability of winning in the center, while it affects positively in the provinces. This result supports the above idea that litigants in the center unnecessarily take their disputes to formal litigation and lose due to lack of evidence. This opposite effect of the burden of proof across regions is quite interesting and needs to be thought out well. Whereas the evidence variable is mostly useful to explain the divergence of the winning probabilities between the parties to the litigation, the burden of proof variable becomes handy to explain the regional differentiations.

As we mentioned above, this may also be because of the differential immaterial cost of losing the litigation across regions. Losing a case in a highly populated city, İstanbul, compared to the province might mean much less disgrace. But the investigation of the differentiation of the immaterial costs across regions is beyond the scope of this study. Future research may contribute to this regional differentiation with more information inside and outside of the courts.

Table 7: Model 2: The Effects of Title Types and Burden of Proof on Winning

Variables	Center	Province	All
Plaintiff			
Elite titled	0.051 (0.042)	0.131** (0.054)	0.094*** (0.035)
Non-Elite titled	-0.031 (0.051)	0.030 (0.059)	-0.048 (0.041)
Pilgrim	0.030 (0.068)	0.091 (0.071)	0.080 (0.051)
Descendant of the Prophet	-0.055 (0.056)	0.107** (0.042)	0.057 (0.036)
Prominent		0.048 (0.095)	0.046 (0.102)
Muslim	-0.033 (0.038)	-0.144 (0.093)	-0.070* (0.036)
Man	0.051 (0.038)	0.019 (0.043)	0.046 (0.030)
Burden of proof	-0.373*** (0.031)	0.291*** (0.039)	-0.107*** (0.025)
Written document	0.268*** (0.049)	0.294*** (0.061)	0.355*** (0.044)
Legal opinion	0.494*** (0.082)	0.292*** (0.084)	0.357*** (0.091)
Representation	-0.002 (0.058)	0.038 (0.045)	-0.002 (0.038)
Defendant			
Elite titled	-0.043 (0.046)	-0.051 (0.047)	-0.056 (0.035)
Non-Elite titled	0.143***	-0.006	0.094**

	(0.047)	(0.060)	(0.040)
Pilgrim	-0.072	0.005	-0.033
	(0.107)	(0.061)	(0.053)
Descendant of the Prophet	0.025	0.007	0.021
	(0.051)	(0.042)	(0.035)
Prominent	0.138	-0.162**	-0.185**
	(0.107)	(0.080)	(0.083)
Muslim	0.058	0.203***	0.106***
	(0.038)	(0.078)	(0.035)
Man	-0.036	0.030	0.016
	(0.041)	(0.055)	(0.036)
Written document	-0.677***	-0.096*	-0.334***
	(0.040)	(0.056)	(0.043)
Legal opinion	0.330***	-0.252***	-0.375***
	(0.124)	(0.044)	(0.050)
Representation	-0.080	-0.167***	-0.162***
	(0.114)	(0.055)	(0.053)
Observations	1,179	746	1,925
R²	0.229	0.322	0.170
Year FE	x	x	x
Case Type FE	x	x	x
Court FE	x	x	x

Robust standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.10

5. CONCLUSION

In this study, the effects of the titles of the litigants on the probability of winning litigation in the Ottoman courts were examined. While being a title holder increases the probability of winning litigation in the provinces, such an effect was not seen in the center. People with similar titles are more likely to win litigations in the province than in the center. When the titles were examined in more detail, it was seen that elite titles were the ones that mostly affect the success probabilities. Possible explanations as referenced to the assumptions of the theory explained might be the differential legal capabilities and the asymmetrical stakes of similar titleholders across regions. When more control variables are added to the model, the evidence seems to be explanatory for the winning rate divergence between the parties. Whoever has the evidence (more legally capable) is more likely to win the case. On the other hand, when the burden of proof is considered, it is seen that litigants in the provinces come to the court more prepared than their central counterparts. This partly explains the divergence across regions. However, although asymmetrical stakes and differentiation in the immaterial cost of losing can also be helpful to understand the divergence across parties and regions, further research is needed to conclude.

All in all, the party that has the evidence wins more, and provincial title holders are more likely to win compared to their central counterparts because of their better legal capabilities proxied by the burden of proof.

6. CONFLICT OF INTEREST STATEMENT

There is no conflict of interest between the authors.

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8. AUTHOR CONTRIBUTIONS

EÖ: The idea;

EÖ: Design;

EÖ: Collection and / or processing of resources;

EÖ: Empirical Analysis and / or interpretation;

EÖ: Literature search;

EÖ: Writer

9. ETHICS COMMITTEE STATEMENT AND INTELLECTUAL PROPERTY COPYRIGHTS

Ethics committee principles were complied with in the study and necessary permissions were obtained in accordance with the intellectual property and copyright principles.

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