

# Japanese Divorce Lawyers: Their Success After Their Own Divorce

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*This is an empirical study of divorce lawyers' practices in Japan—it reports major findings from my survey and interviews. This Article is the first to quantitatively describe the details of the characteristics and practices of Japanese divorce lawyers. This Article is also the first, around the world to my knowledge, to undertake in-depth analyses of the impacts of lawyers' private experiences on their professional practices. It addresses inter-person disparities of lawyers' practices—what the determinants of lawyers' daily practices and behaviors are. In particular, this Article sheds light on how divorce lawyers' practices and behaviors are influenced by divorce- or family-related experiences in their private lives. It analyzes three important aspects of divorce lawyers' practices in Japan: (i) incomes; (ii) fees; and (iii) disputing behaviors. Key findings about Japanese divorce lawyers: (i) lawyers with an experience of own divorce, parents' divorce or having a child have higher incomes; (ii) lawyers with an own divorce experience have higher odds of requesting an overall contingency fee to clients; (iii) lawyers with an experience of own divorce have lower ratios of divorce litigations to divorce conciliations. These findings indicate that lawyers' own divorce- or family-related experiences facilitate them to be better divorce lawyers who are more diligent and successful. The generalized implication is that lawyers' practices can be positively affected by their private emotional experiences in the past, which are relevant to their practice areas.*

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## INTRODUCTION

I conducted the first large survey of Japanese divorce lawyers<sup>1</sup> to study their characteristics and practices.<sup>2</sup> In Japan, it has been a challenge for researchers to study lawyers in a specific practice area because local bar associations and the Japan Federation of Bar Associations (the “JFBA”)<sup>3</sup> do not hold any official database of lawyers that includes each lawyer’s practice areas. There have been several previous surveys of Japanese

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<sup>1</sup> This Article defines the term “divorce lawyer(s)” as “lawyers who have expertise in divorce cases”—more precisely, “lawyers who classify themselves as a lawyer who has expertise in divorce cases.” See *infra* Section I.A for the details of the screening.

<sup>2</sup> See also AUSTIN SARAT AND WILLIAM L. F. FELSTINER, *DIVORCE LAWYERS AND THEIR CLIENTS* (1995); LYNN MATHER ET AL., *DIVORCE LAWYERS AT WORK: VARIETIES OF PROFESSIONALISM IN PRACTICE* (2001); ELEANOR E. MACCOBY & ROBERT H. MNOOKIN, *DIVIDING THE CHILD* (1992) for representative examples of studies of divorce lawyers and divorce case practices in the U.S.

<sup>3</sup> There are 52 bar associations in total in Japan—each prefecture has one local bar association except for Tokyo (with three associations) and Hokkaido (with four associations). The JFBA is an umbrella organization for all of the local bar associations and all of the lawyers in Japan (all of the practicing lawyers are required to register at the JFBA as well as at a local bar association). See *Organization of the JFBA*, JFBA (Oct. 1, 2017), <https://www.nichibenren.or.jp/en/about/us/organization.html>.

lawyers regardless of their practice areas.<sup>4</sup> However, those previous studies have addressed only broad issues relating to the entire lawyers—mostly addressing lawyers' legal careers in Japan. In order to uncover the details of lawyers' practices in a particular area, a survey specifically designed for that area needs to be conducted. I made it possible by using a newly emerged database of Japanese lawyers called Bengoshi.com that has developed in the past decade.<sup>5</sup>

In this Article, I report major findings from the survey (and the supplemental interviews). I focus on the Japanese divorce lawyers' inter-person disparities in their practices and the determinants thereof. In particular, I shed light on how the lawyers' divorce- or family-related experiences (e.g., their own divorce) in private life affect their legal practices in divorce cases. In more generalized words, I undertake analyses of the impacts of lawyers' personal *private* experiences on their *professional* practices. The previous surveys of (the entire) Japanese lawyers have already shown that each lawyer has a different legal career and different practice areas.<sup>6</sup> However, even within the same practice area, their daily practices and professional behaviors differ largely from lawyer to lawyer; how lawyers handle their cases are all different. This Article addresses the questions of how lawyers' practices actually vary and what factors affect these variations.

Uncovering the determinants of lawyers' practices would provide several pragmatic contributions. First of all, it would help individual lawyers learn their own ways to improve their practices. It would also be beneficial for clients when choosing lawyers fit for them. Furthermore, it would give new insights into how to improve legal education; law schools may want to introduce programs to explore personal experiences if the lawyers' private experiences greatly impact their practices. For instance, simulations of personal emotional experiences (as clients) in addition to professional clinical experiences (as legal professionals) may be needed in legal education.

This Article proceeds in three parts. Part I clarifies the method of the study. Part II provides an overview of the characteristics and practices of Japanese divorce lawyers by quantitatively describing the results of the survey—who they are, what they do, and the inter-person disparities in their practices. Part II particularly provides intriguing empirical data for readers who have an interest in Japanese lawyers and Japanese divorce case practices. Part III analyzes the determinants of those inter-person disparities in practices among Japanese divorce lawyers. To my knowledge, Part III is

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<sup>4</sup> See *infra* Section III.B.1.

<sup>5</sup> See *infra* Section I.A.

<sup>6</sup> See *infra* Section III.B.1.

the first in-depth analysis of the impacts of lawyers' *private* experiences on their *professional* practices—regardless of geography and jurisdiction.

## I. METHOD

### A. Survey

I sent out the surveys by mail to 1,000 divorce lawyers all over Japan. A total of 206 surveys were returned between January and February of 2017 (i.e., with a response rate of 20.60%). I created a dataset of 203 respondents after excluding three lawyers<sup>7</sup> who had no experience of divorce conciliation cases in the past ten years. It has been a challenge for researchers to systematically screen lawyers with a specific area of expertise in Japan because there is no official database of that kind. I overcame this issue by using a recently emerged commercial database of Japanese lawyers called Bengo4.com.<sup>8</sup> Bengo4, which is pronounced *bengoshi* in Japanese, means lawyer(s). The 1,000 lawyers were sampled from a total of 1,970 lawyers<sup>9</sup> who had registered *divorce/relationship issues* as one of their *focus areas* on the Bengo4.com database. The way of sampling was proportionate random stratification by prefecture because lawyers were listed by prefecture on the database.<sup>10</sup>

As for the response rate of 20.60%, it is at the highest level feasible for a survey of Japanese lawyers.<sup>11</sup> Besides, the possible selection bias (if any) due to the response rate would be even favorable in light of the purpose of the study. A survey specifically designed for divorce lawyers' practices would, of course, attract more divorce lawyers who actually engage in divorce cases than apparent divorce lawyers who rarely engage in divorce cases.<sup>12</sup> Therefore, the respondents to this survey should have a higher

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<sup>7</sup> One is a freshman lawyer with less than one year of practice. The other two are lawyers with two and three years of practice experience respectively; probably, they are currently attempting to add divorce cases in their areas of specialty although they have not yet taken a divorce case.

<sup>8</sup> *Bengo4.com*, BENG04.COM, INC., <https://www.bengo4.com> (last visited Aug. 1, 2018).

<sup>9</sup> As of Dec. 13, 2016. See *Bengo4.com*, BENG04.COM, INC., <https://www.bengo4.com> (on file with the author on Dec. 13, 2016).

<sup>10</sup> Cf. Japan consists of 47 prefectures.

<sup>11</sup> This response rate is consistent with the major surveys of lawyers in Japan. See, e.g., the response rate of Sato & Hamano, *infra* note 95 (17.95%); Miyazawa et al. (2015), *infra* note 97 (19.45%). Given that the two surveys above were formally conducted with authority of the JFBA, the feasible maximum response rate from Japanese lawyers is considered around 20%.

<sup>12</sup> In fact, one lawyer at my supplemental interview explicitly mentioned he was attracted by the topic of the survey. See interview with lawyer K ("I got very interested in your study. [...] I usually do not answer to surveys, but I wanted to know the answers of

proportion of real divorce lawyers than the non-respondents (if there were any selection bias).

As the present study is the first to use the database of Bengo4.com for the purpose of an academic survey, I would like to note two issues for this sampling method. The first issue is about the nature of registrants. Bengo4.com, launched in 2005 by a private company (Bengo4.com, Inc.), has recently grown to be an extensive database. It is an online portal site, where registered lawyers have their own profile pages to self-advertise and potential clients can search lawyers within their neighborhoods. Although this commercial database is not officially affiliated with the bar associations, it covers more than 30% of all lawyers in Japan—11,508 registrants at Bengo4.com<sup>13</sup> out of 37,680 Japanese bar registrants at the time of the survey.<sup>14</sup> To date, Bengo4.com is the largest public database that enables researchers to list Japanese lawyers in particular areas of practice.<sup>15</sup> Are characteristics of the registrants at Bengo4.com different from the non-registrants? Intuitively, this kind of commercial database may contain more rookies than seniors or more financially unsuccessful lawyers than prosperous lawyers.

In fact, the use of Bengo4.com has not been active among successful corporate lawyers. Almost no lawyers from the Japanese “big four” firms<sup>16</sup> or other second tier corporate firms have registered on Bengo4.com. In the area of corporate law, potential clients (corporations) seem not to use this

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other lawyers to the questions [of this survey]”).

<sup>13</sup> As of Dec. 13, 2016. See *Bengo4.com*, BENG04.COM, INC., <https://www.bengo4.com> (on file with the author on Dec. 13, 2016).

<sup>14</sup> As of Mar. 31, 2016. See JFBA, BENGOSHI HAKUSHO 2017 for the official comprehensive data of lawyer population.

<sup>15</sup> Cf. there is another large database called “Himawari Search,” which also contains the information of each lawyer’s areas of expertise. This one is administered by the bar associations. *Himawari Search*, JFBA, [https://www.bengoshikai.jp/search\\_area.html](https://www.bengoshikai.jp/search_area.html) (last visited Aug. 1, 2018). However, Bengo4.com has several advantages over Himawari Search. First, Bengo4.com has more registrants—nearly double. Second, it is not feasible to use Himawari Search for the purpose of screening lawyers in a large city. In Himawari Search, the registrant lawyers can register their specialties in *service areas* or *major service areas*. Then, the user can search lawyers by the *service areas* or *major service areas* in each prefecture. However, it provides the list of lawyers only when a user specifies searching criteria that fit not exceeding 200 lawyers. For instance, if you search lawyers in Tokyo who register *divorce/custody issue* as a *major service area*, Himawari Search cannot provide the list because the number of fit lawyers exceeds 200; more detailed specifications are required. Third, although Himawari Search has two levels of practice categories (*service areas* and *major service areas*) like Bengo4.com (*practice areas* and *focus areas*), *major service areas* of Himawari Search are the self-reported ones without any cost for registrant lawyers; thus *focus areas*—a fee-charging category—in Bengo4.com is more reliable.

<sup>16</sup> The “big four” firms are Anderson Mori & Tomotsune, Mori Hamada & Matsumoto, Nagashima Ohno & Tsunematsu, and Nishimura & Asahi.

kind of general portal site when retaining lawyers.<sup>17</sup> Also, the corporate lawyers probably do not need to keep advertising themselves once they build a long-term relationship with a sufficient number of corporate clients. However, in the area of divorce, many potential clients (individuals) indeed use Bengo4.com or other portal sites to find their lawyers. At my supplemental interviews,<sup>18</sup> most of the divorce lawyers mentioned their clients' active use of Bengo4.com. For example, one lawyer said:

*All of them [all of my clients in divorce or relationship cases] are rooted in dot com [Bengo4.com]. We are in such an era now. For a divorce or relationship issue, you would hesitate to ask friends to seek a lawyer. That would be a reason. In addition, you can search anything freely on the Internet now.*<sup>19</sup>

The typical way for divorcing clients to retain divorce lawyers these days is to search for divorce lawyers in the neighborhood on databases such as Bengo4.com and shop around them before retaining one. For instance, one lawyer in Tokyo said:

*It is more than seeking a second opinion; clients visit many lawyers. I frequently encounter clients who say I'm the fifth or tenth lawyer they meet. [...] I guess they want to find a lawyer who really fits them and a lawyer who they really think good. And, there are many [lawyers] in Tokyo. [...] [Divorce] is a very big deal in their life for clients, you know.*<sup>20</sup>

The legal market is particularly competitive in Tokyo, but regardless of their location of practices, the divorce lawyers at the interviews confirmed that many clients visit more than one lawyer before they actually decide whom to retain. In the industry of divorce, even the experienced and prosperous divorce lawyers need to keep advertising themselves to obtain new individual clients because divorce cases are basically one-time jobs. Therefore, the divorce lawyers who register on the database are more likely to be comprehensive and non-biased, compared to those in other practice areas.

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<sup>17</sup> Cf. Bengo4.com, Inc. also opened another portal site named Business Lawyers in 2016, specializing in corporate law. But, it has been less active than Bengo4.com—the number of registrants at Business Lawyers is only 677 as of June 3, 2017. See *Business Lawyers*, BENG04.COM, INC., <https://business.bengo4.com/lawyer> (on file with the author on June 3, 2017).

<sup>18</sup> See *infra* Section I.B for the details of the supplemental interviews.

<sup>19</sup> Interview with lawyer H.

<sup>20</sup> Interview with lawyer G.

The second issue is whether the screening based on lawyers' self-advertisements is reliable. The *focus areas* of lawyers on Bengo4.com are the self-reported ones. However, the registration for the *focus areas* is a fee-charging service, and the monthly fees for lawyers increase based on the numbers of their registered *focus areas*.<sup>21</sup> Therefore, those who list *divorce/relationship issues* in their *focus areas* are likely to be the lawyers who really have expertise in divorce cases.<sup>22</sup> Incidentally, the database has another non-fee-charging entry called *practice areas*, in which lawyers can list as many areas as they would like without any cost. 4,625 lawyers<sup>23</sup> register *divorce/relationship issues* as one of their *practice areas*. However, among them, some lawyers are found to list almost all of the areas in their *practice areas*; thus, they may contain those who practice little or no divorce cases in reality. For this reason, I screened lawyers by their *focus areas* (fee-charging entry) and not by their *practice areas* (free entry).

### B. Supplemental Interviews

In addition to the survey, I conducted one-on-one semi-structured interviews between November 2016 and March 2018 with nineteen Japanese lawyers across the country who practice divorce cases. Although this Article primarily reports the results of the survey, input from the interviews facilitated hypotheses generation and survey result interpretation. Therefore, this Article occasionally uses the interview data as supplements. To maintain anonymity and confidentiality, the interviewees are referred to as "lawyer # (alphabet)." The alphabet was assigned randomly for the purpose of filing—it is not the lawyer's initial. All or most of the interviewees are collectively referred to as the "interviewees."

Each interview was approximately one hour in duration and was conducted at the interviewee's office in most cases.<sup>24</sup> All of the interviews were voice recorded with the permission of the interviewees; they were later

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<sup>21</sup> The monthly registration fees for the *focus areas* are JPY 20,000 for one area, JPY 30,000 for three areas, JPY 40,000 for five areas, and JPY 50,000 for eight areas. A total of 17 categories were offered for both of *focus areas* and *practice areas* at the time of the survey: divorce/relationship issue, debt, inheritance, traffic accident, internet, consumer affairs, crime/criminal case, labor, debt collection, estate/construction, international/foreigners affairs, medical affairs, corporate affairs, tax litigation, administrative case, litigation/dispute/procedure, civil affairs/others. See *A Guide to Fee-based Services for Registrant Lawyers*, BENG04.COM, INC., [https://www.bengo4.com/lawyer/service\\_plan/](https://www.bengo4.com/lawyer/service_plan/) (on file with the author on Dec. 13, 2016).

<sup>22</sup> As a result, the survey respondents' mean proportion of divorce cases in their workloads is about 30%. See *infra* Section II.B.1.

<sup>23</sup> As of Dec. 13, 2016. See *Bengo4.com*, BENG04.COM, INC., <https://www.bengo4.com> (on file with the author on Dec. 13, 2016).

<sup>24</sup> With three exceptions at a lounge in the bar association building or in the court building.

transcribed and coded by myself. Fourteen interviewees were recruited through the survey and the remaining five interviewees were recruited separately from the survey. As described in Table 1, a diversity of the interviewees was ensured when recruiting them.

TABLE 1: CHARACTERISTICS OF THE INTERVIEWED DIVORCE LAWYERS

Gender	Years of Practice	Location of Firm	Size of Firm (Num. of Lawyers)	Position at Firm	Exp. of Own Divorce
Male: 16 Female: 3	Mean: 8.74 (Range: 3–19)	Tokyo: 8 Provinces: 5 Others: 6	Solo: 9 2–3 lawyers: 6 4–10 lawyers: 4	Partner/Solo: 15 Employed: 4	Yes: 4

*Notes:* About the location of the firm, *see infra* App. A for the detailed definition of each category. As for the size of the firm, one interviewee works for a branch office (with 4–10 lawyers) of a larger law firm (with over 100 lawyers). As for the experience of own divorce, the number includes two interviewees who have experience separation (not legal but de facto divorce).

## II. CHARACTERISTICS AND PRACTICES OF JAPANESE DIVORCE LAWYERS

Part II describes the major characteristics and current practices of Japanese divorce lawyers, by reporting the summary statistics of the survey data. I first report the survey respondents' demographic characteristics and their private divorce- and family-related experiences. In addition, I report their professional characteristics and practices including topics of female clients, incomes, fees, and disputing behaviors. The summary statistics of most of the factors (i.e., all of the factors used in the analyses of Part III) are also listed in Appendix A. When discussing the survey results in this Part II, I generally assume the survey respondents as a representative sample of Japanese divorce lawyers.<sup>25</sup>

### A. Demographic and Private Characteristics

The mean age of the survey respondents is 41.76 years old ( $SD = 10.25$ , range = 28–80).<sup>26</sup> 22.39% are female (77.61% are male). Compared

<sup>25</sup> *See supra* Section I.A for the details of the sampling method.

<sup>26</sup> *Cf.* The meanings of technical terms (i.e., the basics of the summary statistics) used in this Part II are as follows. I report the ratio for dummy variables (*e.g.*, gender) and categorical variables (*e.g.*, location of firm); I basically report the mean and the standard deviation for continuous variables (*e.g.*, age). The standard deviation (“*SD*”) indicates the variance of the variable; if the value of *SD* is  $\alpha$ , about two third (68%) of the observations fall between the range of mean  $\pm \alpha$ . For example, the age of about two third of the respondents falls between the range of 31.51–52.01 years old—41.76 (mean)  $\pm$  10.25 (*SD*). For continuous variables, I occasionally report the range (i.e., the minimum and maximum values) of the variable among all of the observations when it is helpful to describe its feature. “*N*” is the number of observations (i.e., the sample size; the number of valid response to the question) for each variable. “Statistically significant” means that the result is statistically supported and is no coincidence. The notes of “ $p < 0.01$ ,” “ $p < 0.05$ ,” and “ $p < 0.1$ ” mean that the results are statistically significant at the 1% level, 5% level, and 10%



to the whole population of the Japanese bar where the mean age is approximately 48<sup>27</sup> and 18.42% are female,<sup>28</sup> divorce lawyers are slightly younger and have a relatively higher percentage of females.

With regard to divorce lawyers' divorce and family-related experiences in their private lives (the factors I focus on in the analyses of Part III), 66.17% of the divorce lawyers are currently married; 48.26% have at least one child; 7.46% have experienced their own divorce in the past; 12.94% have experienced their parents' divorce in the past. A survey by the JFBA in 2010 implies that only 2.55% of Japanese lawyers (in all practice areas) have an experience of divorce.<sup>29</sup> Therefore, the percentage of divorce experiencers seems higher among divorce lawyers than the lawyers in other practice areas.

## B. *Professional Characteristics and Practices*

### 1. Basic Professional Characteristics

The divorce lawyers' mean years of practice is 9.34 years ( $SD = 8.02$ , range = 1–42). Their practice locations are both in cities (22.73% in Tokyo and 59.09% in other cities) and in provinces (18.18%).<sup>30</sup> The mean proportion of divorce cases in their workloads is 27.89% ( $SD = 21.25$ , range = 0–98).<sup>31</sup> This result suggests that the majority of divorce lawyers practice cases in other areas than divorce as well. At the same time, it suggests the existence of divorce lawyers who make their livelihood almost solely from divorce cases—4.48% of divorce lawyers allocate 80% or more their workloads for divorce cases, and the maximum ratio answered is 98%.

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level, respectively. The levels of statistical significance suggest the strength of the evidence in the following order  $p < 0.01$  (very strong),  $p < 0.05$  (strong),  $p < 0.1$  (weak), to reject the null hypothesis (i.e., there is no influence of the variable) and to support the result.

<sup>27</sup> See JFBA, BENGOSHI HAKUSHO 2016 at 31 for the official comprehensive data of lawyer population by age groups as of Mar. 31, 2016. I substituted each age group (e.g., 30–39) by its intermediate value (e.g., 35) to make a rough estimate of their mean age (47.81).

<sup>28</sup> Female lawyers at the Japanese bar are 6,896 out of 37,680 as of March 31, 2016. See JFBA, *supra* note 27, at 30 for the official comprehensive data by the JFBA. American readers may feel that the ratio of female is extraordinarily low, but the ratio has been gradually increasing—it was 12.98% in 2006 and 6.92% in 1996. See *id.* See generally Ishida, *infra* note 94 for the details of the situations of Japanese female lawyers.

<sup>29</sup> 40 out of 1568 respondents. See *infra* App. B (particularly, *infra* note 138) for the details of the JFBA survey in 2010.

<sup>30</sup> See App. A for the precise definitions of the location categories.

<sup>31</sup> The exact question is the proportion of divorce cases in a lawyers' entire work based on his or her workload in the previous one year. Thus, the minimum answer of "0" implies that the lawyer (incidentally) had no chance to engage in a divorce case in the previous year, but it does not mean he or she has never practiced divorce cases before.

Additional specialties popular among divorce lawyers are traffic accidents (57.00%), inheritances (56.50%), personal debt affairs (46.00%), criminal cases (41.00%), and labor (33.50%).<sup>32</sup> These areas, including divorce, have in common that their client is usually an individual person and that lawyers often need to deal with human emotions. But, interestingly at the same time, some divorce lawyers have specialties in corporate clients as well: corporate bankruptcies (17.50%) and general corporate affairs (19.50%).

About one-fourth (24.88%) of divorce lawyers engage in some kinds of pro bono activities concerning children's rights, and one-eighth (12.44%) engage in those activities concerning women's rights or sex equality.

## 2. Female Clients

One unique feature of divorce cases in Japan is the high proportion of female clients compared to other practice areas, where male clients are generally the majority.<sup>33</sup> The survey data quantitatively confirms this fact. I actually find that divorce lawyers have more female clients than male clients in divorce cases; the proportion of female clients<sup>34</sup> is 59.72% on average. Considering that the two parties in divorce cases are usually one male and one female,<sup>35</sup> the result indicates wives are more inclined to hire lawyers for their divorce disputes than husbands.

Given the high proportion of female clients in the industry, obtaining and dealing with female clients would be an important task for divorce lawyers. Interestingly, the proportion of female clients varies widely among lawyers ( $SD = 21.78\%$ , range = 0%–100%). By performing a regression analysis of the proportions of female clients on the divorce lawyers' characteristics, I find two factors that affect the proportion of female clients in divorce lawyers' practices: gender and age.<sup>36</sup> As noted in Section I.A, it

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<sup>32</sup> Taking up areas in which more than 30% of divorce lawyers have a specialty. See *infra* App. A for the full list of 15 items.

<sup>33</sup> There has been no empirical data that specifically cover the gender distribution of lawyers' clients. Cf. Yuriko Kaminaga, *Minji sosho to josei (1): sosho tojisha josei [Civil Litigations and Females (1): Female Litigants]*, in SAIBAN KEIKEN TO SOSHO KODO [LITIGATION EXPERIENCES AND BEHAVIORS] 45–67 (Daniel H. Foote & Shozo Ota eds., 2010) (using survey data of the civil litigants in Japan to describe that the majority of litigants are male).

<sup>34</sup> To be precise, the proportion of female clients in divorce conciliation cases. See App. A for the detailed definition.

<sup>35</sup> Same-sex marriages are not legally admitted as marriage in Japan at the moment.

<sup>36</sup> I omit to report the full results of the regression analysis, but as control or independent variables in the regression model, I included marriage, child, own divorce, parents' divorce, age, gender, years of practice, proportion of divorce cases, and location of firm. The impacts of the variables other than gender and age are not statistically significant.

is basically the clients who choose lawyers, not vice versa, in divorce cases. Thus, the proportion of female clients indicates the lawyer's popularity among female clients. In other words, the determinants of divorce lawyers' proportion of female clients are the determinants of female clients' choices of lawyers.

First, female lawyers have more female clients. On average, the proportion of female clients is 70.79% ( $SD = 18.87\%$ ) for female lawyers while it is 57.02% ( $SD = 21.48\%$ ) for male lawyers. Even when other factors are held equal in the regression analysis, female lawyers have 10.68% more female clients than male lawyers ( $p < 0.01$ ). Female lawyers at the interviews shared a common perception that some female clients have concrete preferences for female lawyers although the lawyers are not sure of the reasons.<sup>37</sup> Another survey of clients is probably needed to comprehensively reveal the reasons why female clients prefer female lawyers. But, it may be explained by the characteristic of the legal profession that clients often trust lawyers who can empathize with the clients' position<sup>38</sup>—clients may have a tendency to prefer lawyers who share clients' characteristics.<sup>39</sup> Alternatively, it may be explained by the issue of communication—female clients may feel hesitant to talk about their private issues to male lawyers. For example, one male lawyer clearly mentioned his hesitance to ask private questions to female clients:

*I have to ask about [the client's] sexual relationship issues. It's puzzling for me to ask those issues to young ladies. [...] I feel awkward when asking questions to 25, 26 [years old] girls like "when did you have sex last time?"*<sup>40</sup>

Second, older lawyers have more female clients. When other factors are held equal, one-year [ten-year] increase of lawyer's age increases the proportion of female clients by 0.71% [7.1%] ( $p < 0.01$ ). Again, another survey of clients is needed in the future to reveal the reasons, but the interviews with lawyers suggest one possible reason: female clients may feel that older lawyers are easier to communicate with. The same male lawyer above shared that the puzzle between the male lawyer and the female client does not seem to happen when his boss—an elder lawyer—talks to female clients:

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<sup>37</sup> See interviews with lawyers C, E, and G.

<sup>38</sup> See *infra* note 89.

<sup>39</sup> See JOHN P. HEINZ & EDWARD O. LAUMANN, CHICAGO LAWYERS 139 (rev. ed. 1994).

<sup>40</sup> Interview with lawyer B.

*When I had a boss in the previous law firm [before I launched my own firm], he was an old man. He asks clients directly and listens with a straight face, which seems totally fine.*<sup>41</sup>

Also, another senior male lawyer, 80% of whose clients are female, mentioned that his style of communication might be one reason why female clients choose him. His story implies that female clients may feel more comfortable to burst their emotions in front of older lawyers, who are personally more matured:

*It may be totally irrelevant to lawyers' professional things, but I think, after all, it's necessary to let clients explode their emotions first. Especially, in cases of female clients, you know, they become mentally unstable. So, I first let them cry hard [in a meeting at my office]. [...] But, once they are refreshed and prepared [after crying] females are mentally stronger [than males].*<sup>42</sup>

### 3. Incomes

The annual income of divorce lawyers is about 10 million Japanese Yen (“JPY”) on average (mean = 10.12,  $SD = 5.19$ ),<sup>43</sup> which is roughly equivalent to USD 100 thousand.<sup>44</sup> Incomes of divorce lawyers are relatively modest compared to the other practice areas. Table 2 compares incomes of divorce lawyers from the results of the survey and incomes of whole lawyers in all practice areas from the survey by the JFBA in 2010.<sup>45</sup> Incomes of entire lawyers’ are almost evenly distributed to the five categories from less than JPY 5 million to 20 million and over. On the other hand, incomes of most (75.12%) divorce lawyers fall within the range of JPY 5 million to 15 million. Less than one in ten (8.12%) divorce lawyers earn JPY 20 million or more. Pearson’s  $\chi^2$  test confirms the difference between the two groups ( $p < 0.01$ ).<sup>46</sup>

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<sup>41</sup> Interview with lawyer B.

<sup>42</sup> Interview with lawyer K.

<sup>43</sup> Respondents self-reported their annual incomes from eight categories (intervals). To convert the categories into a continuous variable, each category is substituted by its intermediate value (e.g., the category of “from JPY 5 million below 7 million” is substituted by the value of “JPY 6 million”).

<sup>44</sup> Roughly, JPY 100  $\approx$  USD 1. The precise currency rate as of Aug. 1, 2018 is JPY 112 = USD 1.

<sup>45</sup> See *infra* App. B for the details of the JFBA survey in 2010.

<sup>46</sup>  $\chi^2(4) = 56.75$ .

TABLE 2: COMPARISON OF INCOMES WITH LAWYERS  
IN ALL PRACTICE AREAS

(JPY)	< 5 million	5 million ≤ < 10 million	10 million ≤ < 15 million	15 million ≤ < 20 million	20 million ≤
Divorce Lawyers	10.15%	50.25%	24.87%	6.60%	8.12%
Lawyers in All Areas	20.87%	29.41%	17.16%	12.33%	20.23%

*Notes:* Incomes of divorce lawyers and lawyers in all practice areas respectively. Data of divorce lawyers is from the present study (in 2017,  $N = 197$ ; combining the original eight intervals into the five categories for the purpose of the visibility of the comparison) and that of entire lawyers is from the JFBA survey (in 2010,  $N = 1241$ ).

#### 4. Fees

In Japan, divorce lawyers charge clients on a per-project basis, instead of an hourly basis. The most common fee system for divorce cases includes three types of fees: (i) a retaining fee, (ii) an overall contingency fee, and (iii) an economic-benefits-based contingency fee.

Most lawyers request a retaining fee at the beginning of the divorce cases. Most (93.10%) of the divorce lawyers answered they normally take a retaining fee in their divorce cases. The amount differs by lawyer and by case, but the amount for divorce conciliation or litigation cases is typically around JPY 200–300 thousand.<sup>47</sup> Then, after the case is closed, most lawyers request an overall contingency fee if they achieved the client's main goal (e.g., divorce with child custody). Four-fifth (80.79%) of divorce lawyers answered their default fee system for divorce cases includes this kind of overall contingency fee. Again, the amount differs by lawyer and by case, but it is usually the similar amount as the retaining fee (i.e., JPY 200–300 thousand).<sup>48</sup>

How frequently do these divorce lawyers *actually* request an overall contingency fee? On average, they end up requesting an overall contingency fee to clients in slightly more than half (54.09%,  $SD = 32.63$ ) of their conciliation cases.<sup>49</sup> On the other hand, it is interesting to note that the rest (about one-fifth (19.21%)) of the divorce lawyers fail to adopt the system

<sup>47</sup> The interviewees had a common perception that this amount is the typical price in the industry. See also JFBA, ANKETO KEKKA NI MOTOZUKU SHIMIN NO TAME NO BENGOSHI HOSHU NO MEYASU [GUIDE FOR THE GENERAL PUBLIC ABOUT LAWYERS' FEES: BASED ON THE RESULTS OF SURVEY] 19–20 (2009), [https://www.nichibenren.or.jp/library/ja/attorneys\\_fee/data/meyasu.pdf](https://www.nichibenren.or.jp/library/ja/attorneys_fee/data/meyasu.pdf).

<sup>48</sup> A common perception among the interviewees. See also JFBA, *supra* note 47.

<sup>49</sup> The survey asked the number of conciliation cases in which the respondents actually charged clients the overall contingency fees at the end of the cases in the past ten years. Then, it was divided by the total number of conciliation cases they handled in the past ten years. Four respondents were dropped from the sample because they answered a higher number for conciliations with an overall contingency fee than the total number of divorce conciliations they handled in the past 10 years.

of an overall contingency fee. Perhaps, these lawyers collect fees more flexibly by increasing a retaining fee or an economic-benefits-based contingency fee.

In addition to an overall contingency fee, divorce lawyers usually request an economic-benefits-based contingency fee, of which amount is typically around 10% of the “economic benefits” brought to the clients through the lawyers’ works (e.g., money gained from property divisions or as compensations).<sup>50</sup> For instance, in the case of 10%, lawyers would request JPY 300 thousand if their clients gained compensation money of JPY 3 million. Most (92.61%) of the divorce lawyers contain this kind of benefits-based contingency fee in their default fee system for divorce cases.

There is a practical issue over whether or not to include the amount of child support into the client’s economic benefits. It may be excessive to include the amount of the entire child support period in the calculation (e.g., all of 15 years until a five-year-old child reaches 20) because obligors of child support often cease to make the payment after certain periods. Besides, the legal recipient of child support is technically the child and not the parent (i.e., the client)—the client only receives it as the legal representative of the child although the client gains a de facto benefit from child support.

Practices differ by lawyer, but I find there are two major practices.<sup>51</sup> One popular approach is to not include child support at all (37.43%).<sup>52</sup> Another—slightly more popular—approach is to include the amount of child support for up to two years (42.78%),<sup>53</sup> which is the same standard as a standard adopted by the Japan Legal Support Center (*ho terasu*), a public institution that provides financial loan supports for clients. If a client uses this public loan support, the legal fee from the client must follow their institutional standard regardless of the lawyer’s individual fee system. It seems many lawyers adopted this public standard in their own practices as well.

A few interviewees mentioned the rationale for their own approaches. For example, one lawyer stated his policy of not including child

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<sup>50</sup> See, e.g., NIHON SHIHO SHIEN SENTA, NIHON SHIHO SHIEN SENTA GYOMU HOHOSHO [THE JAPAN LEGAL SUPPORT CENTER’S STATEMENT OF OPERATION PROCEDURES] 88 (2018), [https://www.houterasu.or.jp/houterasu\\_gaiyou/kouhyou\\_jikou/sienhou/index.files/100862288.pdf](https://www.houterasu.or.jp/houterasu_gaiyou/kouhyou_jikou/sienhou/index.files/100862288.pdf) (adopting the institutional standard of 10% for clients who use the public loan support from this institution).

<sup>51</sup> The survey offered four options: (a) include entire period (1.07%), (b) include two years (42.78%), (c) not at all include (37.43%), and (d) others (18.72%). The approaches specifically stated by the respondents who chose (d) others were such as “case by case,” “include three years,” and “include five years.”

<sup>52</sup> See *id.*

<sup>53</sup> See *id.*

support at all. He learned from his former boss that child support must be spent on children's living expenses and not for lawyers:

*My boss was like, "It's fine. That [i.e., child support] is for your kids' meal." He was always like that and never took fees from child support.*<sup>54</sup>

Another lawyer mentioned fairness as the rationale for adopting the two-year standard:

*The amount of the entire period is too much. But, I think it is rather unfair for clients if the fee [for cases with child support] is exactly the same as for cases without any child support. [...] The amount that is not a real burden [for clients] would be probably based on two years.*<sup>55</sup>

However, most of the lawyers interviewed failed to clarify the rationale for their own approaches—it seems most divorce lawyers do not have any strong reasons for choosing their own approaches. Probably, their choices are (maybe even unconsciously) made in an economically rational way in accordance with the reality of their practices.<sup>56</sup>

## 5. Disputing Behaviors

In Japan, lawyers can be involved in three different stages of divorce disputes: negotiations, conciliations, and litigations. Japan has a unique system of divorce. Unlike many other countries including the U.S., a divorce decree from a court is not required for divorce in Japan.<sup>57</sup> As long as couples do not have any trouble in establishing the divorcing conditions, they can simply submit a divorce notice at the city hall to register their divorce (divorce by mutual agreement (*kyogi rikon*)). When the couples have a trouble in setting the divorcing conditions, divorce disputes are typically developed from divorce negotiations to divorce conciliations (*rikon chotei*), and further to divorce litigations (*rikon sosho*). Divorce conciliation is a mediation-like procedure at family court. The procedure is

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<sup>54</sup> Interview with lawyer B.

<sup>55</sup> Interview with lawyer G.

<sup>56</sup> See also *infra* Section III.D (hypothesizing that lawyers who are more diligent and successful in child support disputes would be more inclined to adopt the two-year fee standard).

<sup>57</sup> See, e.g., Hiroharu Saito, *Bargaining in the Shadow of Children's Voices in Divorce Custody Disputes: Comparative Analysis of Japan and the U.S.*, 17 CARDOZO J. CONFLICT RESOL. 937 (2016) for a more detailed comparison of divorce systems in Japan and the U.S.

handled by two part-time conciliators supervised by one family court judge. But, unlike pure mediation, conciliators often make specific settlement suggestions as well as they facilitate conversations between the parties.

Divorce conciliation is a prerequisite for divorce litigation (so-called the principle of conciliation first); thus, parties are not allowed to pursue a divorce litigation without first bringing the case to conciliation.<sup>58</sup> Only if the parties could not settle through conciliation, can the case go to litigation to seek court's adjudication. 216,798 couples divorced in Japan in 2016.<sup>59</sup> Among them, most (188,960 (87.16%)) of the couples divorced by mutual agreements outside the court (*kyogi rikon*).<sup>60</sup> One in ten (21,651 (9.99%)) couples were settled at conciliations (*rikon chotei*).<sup>61</sup> Only 5,640 (2.60%) divorces were litigated (*rikon sosho*); resulting in about a half of the litigated cases (3,474 (1.60%)) were settled and another half (2,166 (1.00%)) were resolved by court's adjudications.<sup>62</sup>

It has been said, among the three stages, conciliations are the divorce lawyers' central jobs in general in Japan.<sup>63</sup> The survey data quantitatively confirms this fact. Table 3 presents the summary statistics of the number of cases per year by type.

TABLE 3: NUMBER OF CASES PER YEAR BY TYPE

Case Type	Mean	SD	Range	N
Divorce negotiations	3.45	6.45	0.00–44.00	198
Divorce conciliations	5.39	5.66	0.20–31.25	199
—Conciliations between couples with minor children	3.71	4.45	0.00–29.00	199
—Conciliations including custody disputes	1.97	2.72	0.00–20.00	196
Divorce litigations	1.75	2.56	0.00–15.00	199

*Notes:* The number of cases per year by case type. The survey asked respondents the number of each case type in the past ten years, which was divided by ten (for respondents with ten or more years of practice) or by the years of practice (for respondents with less than ten years of practice). The numbers of negotiations, conciliations, and litigations are counted cumulatively (i.e., when a respondent handled all of the three stages for one case for the same client, it counts as one negotiation, one conciliation, and one litigation).

<sup>58</sup> See generally Saito, *supra* note 57, at 944.

<sup>59</sup> See Kosei rodo sho [Japanese Ministry of Health, Labor, & Welfare], *Jinko dotai chosa 2016 [Official Demographic Report for 2016]* (Sep. 15, 2017), <https://www.mhlw.go.jp/toukei/list/81-1.html>.

<sup>60</sup> See *id.*

<sup>61</sup> See *id.*

<sup>62</sup> See *id.*

<sup>63</sup> This is a common perception among the interviewees.



Divorce lawyers take about five (5.39) divorce conciliation cases on average per year. Among those, about four (3.71) conciliation cases on average are disputes between couples with minor children; about two (1.97) conciliation cases on average include a dispute over post-divorce custody of the children.<sup>64</sup>

The divorce lawyers' take about three (3.45) divorce negotiation cases on average per year. The ratio of divorce lawyers' negotiation cases to conciliation cases is about 67.84% on average—a divorce lawyer does negotiations prior to conciliations in roughly two third of his or her divorce cases on average. At the same time, variance of the negotiation ratio among lawyers is large ( $SD = 71.18\%$ , range = 0%–400%), which means lawyers' preferences regarding whether or not to take negotiation cases, greatly differ by lawyer.<sup>65</sup> Fourteen respondents answered that they have never taken negotiation cases in the past ten years (i.e., 0%) while the highest respondent takes four times more negotiations than conciliations (i.e., 400%).

According to the interviews, some lawyers certainly avoid engaging in negotiations prior to conciliations. They think the lawyers' involvements in negotiations without facilitations from conciliators are inefficient. They take cases only from the stage of conciliations or they encourage clients to immediately file a motion of conciliations without first making an attempt to settle the cases through negotiations outside the court. For example, one lawyer said:

*I usually don't [take cases from the negotiation stage]. I have experienced one [negotiation] case before, but then, I thought I shouldn't do it anymore. [...] Non-mandatory negotiations always drag on and end up on the back-burner in our jobs. [...] If the case goes to conciliation, hearing dates are set and conciliators instruct what the parties to decide by the subsequent hearing dates. In terms of handling my jobs promptly, I thought it is better to have the court's involvement.<sup>66</sup>*

On the other hand, there are also lawyers who actively engage in divorce negotiations. Another lawyer described his positive experiences of negotiation cases. He does negotiations in almost half of his cases:

*I first offer general figures [for divorce] and hear the counterparty's opinion. In that sense, divorce negotiations are not so different from*

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<sup>64</sup> To be precise, the number of cases that had disagreements on post-divorce child custody between the parties at the first hearing date of the conciliations.

<sup>65</sup> Nevertheless, not only the lawyers' personal preferences but also the requests from the clients and the characteristics of the cases would also influence the lawyers' strategies for pre-conciliation negotiations.

<sup>66</sup> Interview with lawyer E.

*other civil case negotiations. [...] There are many [cases that settle through negotiations]. [...] Couples [around this area] are relatively wealthy and young. So, they don't fight much about money. A number of couples decide to conclude their divorce negotiations at a certain point.*<sup>67</sup>

Then, turning to litigations, the average number of divorce litigation cases one divorce lawyer takes per year is about two (1.75). The ratio of each divorce lawyer's litigation cases to conciliation cases is 32.15% on average—a divorce lawyer does litigations in roughly one third of their divorce cases on average. At the same time, the variance of the ratio is large ( $SD = 28.39\%$ , range = 0%–225%) among the divorce lawyers. Actually, the lowest one-fifth ( $N = 36$ ) of the lawyers have the litigation ratio of only 10% (and less), while the highest one-fifth ( $N = 44$ ) group have the ratio of 50% (and more). This large variance suggests that the divorce lawyers' strategic preferences regarding conciliations and litigations vary from lawyer to lawyer—from which stage they take cases and how they proceed with their cases after being retained. Some lawyers have definite preferences to avoid conciliation cases—they often take cases only from litigations.

Furthermore, there are variations among lawyers in terms of the timing to abandon conciliations to move to litigations. Conciliation is a prerequisite for litigation. Divorcing parties are allowed to pursue a litigation to seek a court's adjudication only if the parties fail to settle through the conciliation. However, in reality, some lawyers often abandon conciliations at the first hearing date to start litigations right away. Actually, as described in Section II.B.4 above, the major fee system for divorce lawyers in Japan is not an hourly charge—it is a fixed fee and contingency. Consequently, some divorce lawyers want to shorten the total amount of time required for each case. Conciliations usually take much longer binding hours at court than litigations for lawyers. Total length of one conciliation hearing is usually 2–3 hours (often referred to by lawyers as “half a day”<sup>68</sup>) while one litigation hearing typically takes 5–20 minutes.<sup>69</sup> Conciliation is in a caucus style, where conciliators hear from each party for 20–40 minutes alternately. During the counterparty's turn to talk to conciliators, the lawyer also has to wait with his or her client in a communal waiting room. For

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<sup>67</sup> Interview with lawyer J.

<sup>68</sup> See, e.g., interview with lawyer L (“[C]onciliations really take time. It [one hearing date] takes half a day for sure”).

<sup>69</sup> Civil litigations in Japan, including divorce litigations, are heavily paper-based procedures. Thus, the major purposes of litigation hearings (unless they do examinations of witnesses) are just to exchange briefs between the parties and to have a short conversation about the possibility of settlement. Additionally, there are no U.S.-like discovery procedures in Japan.

example, in the interview, one lawyer confessed his honest feeling of reluctance to take divorce conciliations:

*There are a lot of lawyers who don't like to take [divorce cases]. They take time and they are unprofitable. I do them with reluctance. [...] I don't want to consume too much time in conciliations. It is also tiring to spend time with clients [during the wait time at court]. [...] So, I don't want to take cases from conciliations if possible. [...] I usually say [to the clients] "if you couldn't settle through conciliations, please come again," and then make some advice about conciliations. There are also many cases where I instruct clients to first do and abandon conciliations before coming to me or I take from the conciliation in order to move to litigation. [...] My stance, which is actually not for clients but for myself, [...] is to prefer litigations at the pace of one hearing per month.<sup>70</sup>*

In contrast, other divorce lawyers do prefer to take conciliation cases. One lawyer highlighted the importance for clients to have a lawyer in conciliations:

*A number of websites [information sites for divorcing people] now explain that it is possible to do conciliations by themselves [without a lawyer], but I think these [websites] are awful. In conciliations, you are always required to make instant decisions there and then. Conciliations are actually more difficult. You can simply escape by saying "I will take it back and consider [by the next hearing date]" in litigations, but it doesn't work so in conciliations.<sup>71</sup>*

### III. SUCCESSFUL DIVORCE LAWYERS

Part II presented the inter-person disparities of divorce lawyers' practices. Part III addresses the determinants of those Japanese divorce lawyers' practices and behaviors. In particular, Part III focuses on the impact of divorce- or family-related experiences in divorce lawyers' private life on their practices. In order to analyze the impact of private experiences on divorce lawyers' practices, I observe the effects of their private divorce- and family-related experiences (i.e., independent variables) while controlling for the effects of basic demographic factors and professional factors (i.e., control variables). Furthermore, I perform regression analyses to uncover the determinants of divorce lawyers' incomes, fees, and disputing behaviors, respectively.

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<sup>70</sup> Interview with lawyer F.

<sup>71</sup> Interview with lawyer I.

In Section III.A, I first describe the background of the analyses. After reviewing the literature on the legal professionals' decision making, I generate the hypothesis to be tested in the analyses. In Section III.B, I overview the variables used in the analyses. By reviewing the literature on lawyers' legal careers, I select control variables that are used in the analyses. In Section III.C–III.E, I present the results of the regression analyses of incomes, fees, and disputing behaviors.

### A. Hypothesis Generation

#### 1. Literature on Legal Professionals' Decision Making

The present study is inspired by studies around the world on the legal professionals' decision-making—their decision-making can be affected by a wide variety of factors *extraneous* to the merits of cases.

First, studies have addressed judges' decision-making with a particular focus on the intra-person disparities due to the systematic cognitive biases. The same judge can render different decisions under different cognitive circumstances. Guthrie and colleagues conducted scenario experiments with federal magistrate judges in the U.S. and found that all of the five common cognitive biases (i.e., anchoring, framing, hindsight, representativeness, and egocentric biases) affect judges' decision-making.<sup>72</sup> Another experimental study with German judges and prosecutors also confirmed the influences of anchoring bias on judges' decision-making.<sup>73</sup> Rachlinski and colleagues examined another type of cognitive bias—judges' attention on evidence. Their scenario experiments with U.S. judges found that judges' attention on evidence is influenced by the contexts in which judges review the evidence and by the orders and the forms of evidence presented (i.e., contrast effect).<sup>74</sup> A study by Shai Danziger and colleagues, using field data of Israeli judges' parole decisions, found that the rates of parole approval drop gradually as time advances after judges' each meal break.<sup>75</sup> They suggested the possibility of psychological effects in sequential decision-making; repeated rulings may increase judges' tendency to favor the status quo.<sup>76</sup>

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<sup>72</sup> See Chris Guthrie et al., *Inside the Judicial Mind*, 86 CORNELL L. REV. 777 (2001).

<sup>73</sup> See Birte Englich et al., *Playing Dice With Criminal Sentences: The Influence of Irrelevant Anchors on Experts' Judicial Decision Making*, 32 PERS. & SOC. PSYCHOL. BULL. 188 (2006).

<sup>74</sup> See Jeffrey J. Rachlinski et al., *Altering Attention in Adjudication*, 60 UCLA L. REV. 1586 (2013).

<sup>75</sup> See Shai Danziger et al., *Extraneous Factors in Judicial Decisions*, 108 PROC. NAT'L ACAD. SCI. U.S. 6889 (2011).

<sup>76</sup> *But see* Keren Weinshall-Margel & John Shapard, *Overlooked Factors in the Analysis of Parole Decisions*, 108 PROC. NAT'L ACAD. SCI. U.S. E833 (2011) (criticizing

Second, there have been studies addressing intra-person disparities of lawyers' decision-making, albeit fewer compared to the studies of judges. Andrew J. Wistrich and Rachlinski tackled the question why lawyers' settlements often delay and do not happen until the eve of trial.<sup>77</sup> Their scenario experiments with U.S. lawyers found that lawyers are affected by the four cognitive biases relevant to the delay of decision-making (i.e., framing,<sup>78</sup> confirmation, nonconsequentialist reasoning, and sunk-cost fallacy biases). Another study of UK lawyers by Ian K. Belton and colleagues also confirmed lawyers' settlement decisions are significantly affected by the gain-loss framing although lawyers are less susceptible than non-lawyer professionals (e.g., civil servants, bankers, and doctors).<sup>79</sup> In brief, studies have demonstrated that a variety of cognitive biases can influence lawyers' decision-making.

Lastly, studies using field data of criminal sentencing have provided empirical evidence for the existence of judges' inter-person disparities in decision-making. Further, one of the influential factors preceding studies have clearly spotted is judges' political ideologies. The criminal sentencing practice in the U.S. greatly changed after *United States v. Booker*,<sup>80</sup> which changed the treatment of U.S. Federal Sentencing Guidelines from mandatory minimums to advisory. A study of Ryan W. Scott used judge-specific sentencing data from the District of Massachusetts to demonstrate a concrete increase in inter-person disparities of judges' sentencing after *Booker*.<sup>81</sup> A study of Crystal S. Yang created a more comprehensive dataset

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that the order of cases and the timing of judges' breaks may not have been random—other factors attributable to the order of cases or the timing of breaks may have caused the downward trend in parole approval) for the weakness of the study of Shai Danziger et al., *supra* note 75. See also Shai Danziger et al., *Reply to Weinshall-Margel and Shapard: Extraneous Factors in Judicial Decisions Persist*, 108 PROC. NAT'L ACAD. SCI. U.S. E834 (2011) for the reply to the criticism above.

<sup>77</sup> See Andrew J. Wistrich & Jeffrey J. Rachlinski, *How Lawyers' Intuitions Prolong Litigation*, 86 S. CAL. L. REV. 571 (2013).

<sup>78</sup> *But see* Russell Korobkin & Chris Guthrie, *Psychology, Economics, and Settlement: A New Look at the Role of the Lawyer*, 76 TEX. L. REV. 77 (1997) for the framing bias. The scenario experiments of Korobkin and Guthrie with lawyers in San Francisco found no significant effects of the gain-loss framing in contrast to the study of Wistrich and Rachlinski. In both of the studies, participant lawyers were randomly assigned to either one of the gain-frame or the loss-frame scenarios, where the participants played the role of lawyers advising the client. A major difference of the scenarios was that participants played the role of a plaintiff's counsel in both of the gain-frame and the loss-frame in Korobkin and Guthrie while the participants played a plaintiff's counsel in the gain-frame and a defendant's counsel in the loss-frame in Wistrich and Rachlinski.

<sup>79</sup> See Ian K. Belton et al., *Lawyer and Nonlawyer Susceptibility to Framing Effects in Out-of-Court Civil Litigation Settlement*, 11 J. EMPIRICAL LEGAL STUD. 578 (2014).

<sup>80</sup> *United States v. Booker*, 543 U.S. 220 (2005).

<sup>81</sup> See Ryan W. Scott, *Inter-Judge Sentencing Disparity After "Booker": A First*

covering all ninety-four district courts around the U.S. to examine the impact of *Booker*.<sup>82</sup> She found, after *Booker*, that the inter-person disparities of overall judges' sentencing have doubled and that the tendencies of Democratic-appointed judges and female judges to give shorter sentences than Republican-appointed judges and male judges, respectively, were magnified.<sup>83</sup> Furthermore, studies before *Booker* (i.e., the studies with data during the period when the U.S. Federal Sentencing Guidelines were mandatory minimums) have already found influences of judges' political ideology: Democratic-appointed judges tend to be more lenient than Republican-appointed judges.<sup>84</sup>

In sum, the preceding studies on the legal professionals' decision-making have revealed the effects of various factors extraneous to the merits of cases: judges' and lawyers' intra-person disparities due to systematic cognitive biases; and the existence of judges' inter-person disparities and particularly, the influences of judges' political ideologies on their decision-making.

## 2. Hypothesis

The claim of an American legal realist, Jerome Frank, has often been caricatured as even "what the judge had for breakfast" could affect the legal professional's decisions on the day.<sup>85</sup> This trope seems to have motivated many empirical studies of intra-person disparities among the legal professionals.<sup>86</sup> However, this trope is actually not a good summary of

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*Look*, 63 STAN. L. REV. 1 (2010).

<sup>82</sup> See Crystal S. Yang, *Have Interjudge Sentencing Disparities Increased in an Advisory Guidelines Regime? Evidence From Booker*, 89 N.Y.U. L. REV. 1268 (2014).

<sup>83</sup> See *id.* at 1316.

<sup>84</sup> See Max M. Schanzenbach & Emerson H. Tiller, *Strategic Judging Under the U.S. Sentencing Guidelines: Positive Political Theory and Evidence*, 23 J. L. ECON. & ORG. 24 (2007) (using district level variation in the characteristics of judges and finding that sentences in the district courts with more Democratic-appointed judges are shorter for street crimes (violent, theft, and drug crimes) than in the district courts consisted of a higher fraction of Republican appointees); Max M. Schanzenbach & Emerson H. Tiller, *Reviewing the Sentencing Guidelines: Judicial Politics, Empirical Evidence, and Reform*, 75 U. CHI. L. REV. 715 (2008) (using judge-specific sentencing data of district courts and finding that Democratic-appointed judges are more likely to give a downward departure from the Federal Sentencing Guidelines when the appellate circuit court has the majority of Democratic-appointed judges); Joshua B. Fischman & Max M. Schanzenbach, *Do Standards of Review Matter? The Case of Federal Criminal Sentencing*, 40 J. LEGAL STUD. 405 (2011) (suggesting that sentences in the district courts with more Democratic-appointed judges are more lenient than in courts with more Republican-appointed judges and the difference between the two groups is larger when appellate review is deferential, compared to when review is strict).

<sup>85</sup> See FREDERICK SCHAUER, THINKING LIKE A LAWYER 129 (2009).

<sup>86</sup> See, e.g., Danziger et al., *infra* note 75, at 6889 (explicitly mentioning that they

Frank's entire claim.<sup>87</sup> Frank did not narrowly focus on intra-person disparities caused by trivial factors. He rather emphasized, "uniquely individual factors [depending often on peculiarly individual traits of the persons] often are more important causes of judgments than anything which could be described as political, economic, or moral biases."<sup>88</sup> He highly valued the impacts of personal attributes of the individual legal professionals. Much is still unknown about the determinants of inter-person disparities of the legal professionals' behaviors. But considering that the preceding studies of judicial decision-making have suggested the possibility of effects of various psychological factors, it would be reasonable to generate the following hypothesis:

Generalized Hypothesis: Practices of lawyers can be affected by their emotional private experiences in the past, which are relevant to the topic of the cases.

For example, imagine yourself getting almost killed by medical malpractice, being mistakenly arrested, or getting divorced with your once-beloved partner. These serious and emotional life events may change your professional behaviors as a lawyer in medical cases, criminal cases, or divorce cases. In light of your firsthand experience, you perhaps have more passion in those cases, you can perhaps understand clients' situations more fully, and you can perhaps empathize with the clients' feelings more deeply. Consequently, you perhaps become a more diligent and better lawyer in those practice areas. Lawyers' works are heavily dependent on conversations with clients, and clients often seek a trust in their lawyers beyond technical competency.<sup>89</sup> Therefore, your ability to empathize with clients would be a great advantage in your works.

Divorce lawyers are probably the best subjects to analyze this Generalized Hypothesis because the private experience of divorce is more common among lawyers, compared to other comparable emotional events such as medical malpractice and mistaken arrest. Divorce lawyers' stories at the interviews indeed imply a causal relationship between their own divorce experiences and their practices. One male lawyer said he can

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tested this trope).

<sup>87</sup> See SCHAUER, *supra* note 85, at 129.

<sup>88</sup> JEROME FRANK, *LAW & THE MODERN MIND* 114 (1930).

<sup>89</sup> This characteristic of legal profession becomes clearer when it is compared with the medical profession. In the medical profession, the relationships between doctors and patients are routinized, and the doctors' technical competency is the most important factor for the patients. On the other hand, in the legal profession, clients often require lawyers who can empathize with the clients' positions. See HEINZ & LAUMANN, *supra* note 39, at 138-39.

particularly understand well the feelings of husbands who were left behind by their wives and children, based on his own experience of such a situation:

*I know the feeling at the time a husband had children taken away. And, I also know the changes of the feeling after a while. [...] In the beginning, you are filled with a sense of loss and feel like "I would like to take the children back by all means!" But after a while, you gradually feel like "OK, maybe I should leave them alone..."*<sup>90</sup>

He also said his firsthand knowledge certainly helps him develop strategies for female clients in custody disputes as well as for male clients:

*I can guess the feeling of the man, the counterparty. It's like, for example, "he must be quite furious now because it is still at the beginning, but he will probably settle down in the near future."*<sup>91</sup>

Another lawyer said he began to practice divorce cases because of his own experience, and he expressed strong emotion toward divorce cases:

*I myself have experienced a divorce litigation, and I have a very strong feeling that the court for domestic relation issues in Japan is quite unreasonable. So, partly because of that experience, I was hoping to do [divorce cases when I opened my own law firm].*<sup>92</sup>

Based on his personal experience, he also has a policy that he never takes cases for clients to claim compensations for counterparties' infidelity. In another respect, one married lawyer, who is particularly diligent in custody and visitation disputes, mentioned about the influence of his own young daughter:

*I recently do a lot of child custody disputes, and I'm often frustrated. To be honest, I myself have a young child, and I know how much parents' love their children. But, the counterparties often refuse my clients to see their children at all [...]; the counterparties even refuse to notify the whereabouts of the children. [...] So, I sometimes get into quite a quarrel with the counterparties' attorneys.*<sup>93</sup>

Therefore, applying the Generalized Hypothesis, I set out below a specific hypothesis for divorce lawyers:

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<sup>90</sup> Interview with lawyer L.

<sup>91</sup> Interview with lawyer L.

<sup>92</sup> Interview with lawyer H.

<sup>93</sup> Interview with lawyer A.



Hypothesis: Divorce lawyers' divorce- or family-related experiences in private life facilitate them to be better divorce lawyers who are more diligent and more successful in divorce case practices.

I analyze the influences of divorce lawyers' divorce- or family-related experiences in the three important topics in divorce case practices to examine this hypothesis. Quantitative analyses are suitable and essential for testing this kind of Hypothesis—qualitative analyses (e.g., interviews) would not be able to uncover subconscious effects of lawyers' private experiences. Controlling for other relevant factors (i.e., basic demographics and professional circumstances), I assess the impacts of divorce lawyers' private experiences on their incomes, fees, and disputing behaviors.

### B. *Selection of Variables*

For independent variables to be examined—divorce lawyers' private divorce- and family-related experiences—I use four variables: currently married; having a child; an experience of own divorce in the past; and an experience of parents' divorce in the past. Then, for control variables, it is essential to control major factors that may have impacts on lawyers' daily practices. For this purpose, I begin with reviewing the preceding studies that have examined the determinants of lawyers' legal careers. Although those studies have left the determinants of lawyers' daily practices and behaviors unexplored, their findings help identify factors that might somehow influence lawyers' practices.

Please note that the summary statistics and the detailed definition of the variables I use in the analyses are all listed in Appendix A. Also, each variable was already described in Part II.

#### 1. Literature on Lawyers' Legal Careers

I review studies of lawyers' legal careers in North America in addition to those in Japan because there have been numerous studies in North America. Both in Japan and North America, studies have found that (i) lawyers' incomes are influenced by their legal careers and working environments, and that (ii) their legal careers and working environments are predictable by their legal education. Major recent studies and their findings can be summarized as follows.

In Japan, there were two recent projects that studied lawyers' legal careers.<sup>94</sup> A project led by Iwao Sato and Ryo Hamano analyzed the most

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<sup>94</sup> Unfortunately, most of their findings have been published only in Japanese, with few exceptions such as Kyoko Ishida, *Why Female Lawyers Get Less Multiple Glass Ceilings for Japanese Female Lawyers*, 39 *Hastings Int'l & Comp. L. Rev.* 411 (2016)

extensive dataset of Japanese lawyers.<sup>95</sup> They used data from a nation-wide economic basis survey of lawyers conducted by the JFBA in 2010.<sup>96</sup> Another project led by Setsuo Miyazawa conducted nation-wide surveys of young lawyers to describe lawyers' entry-level careers.<sup>97</sup> They conducted surveys twice (in 2011 and 2014) to the cohort of lawyers who became lawyers in 2009 (i.e., one year and four years after their bar registrations). Aside from the abovementioned two projects, Minoru Nakazato and colleagues employed a unique approach from taxpayer data: they gathered the names and the tax amount of lawyers on the high-income taxpayer list (which was publicly available until 2004), and analyzed the determinants of lawyers' incomes.<sup>98</sup>

In North America, studies have been conducted on various different scales. First, there have been studies using a nation-wide dataset. The *After the JD* (the "AJD") project is a longitudinal study of the cohort of U.S. law school graduates who became lawyers in 2000.<sup>99</sup> Ronit Dinovitzer and Bryant G. Garth, for instance, analyzed data from the AJD's first wave survey, at which the participating lawyers had practice experiences for one or two years.<sup>100</sup>

Second, there were studies on lawyers in specific regional areas. John P. Heinz and colleagues famously studied Chicago lawyers by face-to-face interviews in 1995.<sup>101</sup> Fiona M. Kay and colleagues analyzed the survey data of lawyers in Ontario, Canada.<sup>102</sup> Another study of Dinovitzer

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(examining the issue of gender gap in English by using the data of both projects).

<sup>95</sup> See Iwao Sato, *Hendoki no nihon no bengoshi*, in HENDOKI NO NIHON NO BENGOSHI [JAPANESE LAWYERS IN THE CHANGING PERIOD] 1, 4–7 (Iwao Sato & Ryo Hamano eds., 2015).

<sup>96</sup> See *infra* App. B for details of the survey by the JFBA.

<sup>97</sup> See Setsuo Miyazawa et al., *Dai 62ki bengoshi no kyoiku haikai, gyomu kankyo, senmon bunka, manzoku kan, oyobi fuankan* [Educational Background, Work Environment, Specialization, Satisfaction, and Concerns of the Practicing Attorneys of the 62nd Cohort : Second Report of the First Mailed Questionnaire Survey], 6 AOYAMA HOMU KENKYU RONSHU 35 (2013); Setsuo Miyazawa et al., *Dai 62ki bengoshi dai 2kai yuso chosa dai 2ho* [The Second Report of the Second Mailed Questionnaire Survey of the 62nd Cohort Attorneys: From Bivariate Analysis to Multivariate Analysis], 10 AOYAMA HOMU KENKYU RONSHU 39 (2015).

<sup>98</sup> See Minoru Nakazato et al., *The Industrial Organization of the Japanese Bar: Levels and Determinants of Attorney Income*, 7 J. EMPIRICAL LEGAL STUD. 460 (2010).

<sup>99</sup> See generally, Bryant G. Garth, et al., *After the JD*, AM. B. FOUND., <http://www.americanbarfoundation.org/research/project/118> (last visited Aug. 1, 2018) for the history of the AJD project and the summary of their findings.

<sup>100</sup> See Ronit Dinovitzer & Bryant G. Garth, *Lawyer Satisfaction in the Process of Structuring Legal Careers*, 41 LAW & SOC'Y REV. 1 (2007).

<sup>101</sup> See John P. Heinz et al., URBAN LAWYERS 19 (2005).

<sup>102</sup> See Fiona M. Kay et al., *Undermining Gender Equality: Female Attrition from*

focused on Jewish lawyers in Canada (who moved from Quebec to Ontario between 1975 to 1990 during the period of political change in Quebec).<sup>103</sup>

Third, studies have created individual datasets of specific law schools' alumni. Jeffrey Evan Stake and colleagues examined the survey data of graduates of Indiana University School of Law-Bloomington at the time five years (the cohort of classes 1995–2001) and fifteen years (the cohort of classes 1985–1991) after graduations.<sup>104</sup> John Monahan and Jeffrey Swanson analyzed graduates of the University of Virginia School of Law, after seventeen years of graduations (the cohort of class 1990).<sup>105</sup> The University of Michigan Law School has compiled data from the alumni surveys at 5th-, 15th-, 25th-, and 35th-anniversary of their graduations; Kenneth G. Dau-Schmidt and Kaushik Mukhopadhya analyzed data from the fifth-year survey of classes 1987–91 and the 15th-year survey of classes 1977–81.<sup>106</sup>

The major findings from those studies are basically similar in Japan and North America. First, lawyers' incomes are largely predictable from the educational factors (e.g., the ranks of schools and the GPAs at school) and the professional working environments (e.g., the locations of firms, the sizes of firms, and the years of practice). In short, “elite” lawyers from higher ranked schools (with higher GPAs) are more inclined to work for larger law firms in the city, where they mainly serve for larger corporate clients in more large-scale lucrative transactions and litigations.<sup>107</sup> On the other hand,

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*Private Law Practice*, 50 LAW & SOC'Y REV. 766 (2016).

<sup>103</sup> See Ronit Dinovitzer, *Social Capital and Constraints on Legal Careers*, 40 LAW & SOC'Y REV. 445 (2006).

<sup>104</sup> See Jeffrey Evans Stake et al., *Income and Career Satisfaction in the Legal Profession: Survey Data from Indiana Law School Graduates*, 4 J. EMPIRICAL LEGAL STUD. 939 (2007).

<sup>105</sup> See John Monahan & Jeffrey Swanson, *Lawyers at Mid-Career: A 20-Year Longitudinal Study of Job and Life Satisfaction*, 6 J. EMPIRICAL LEGAL STUD. 451 (2009).

<sup>106</sup> See Kenneth G. Dau-Schmidt & Kaushik Mukhopadhya, *The Fruits of Our Labors: An Empirical Study of the Distribution of Income and Job Satisfaction Across the Legal Profession*, 49 J. LEGAL EDUC. 342 (1999).

<sup>107</sup> See, e.g., Atsushi Bushimata, *Gyomu no naiyo, sono kiteiyouin, oyobi gyomu no senmonka* [Practice Areas, their Determinants, and their Specialization], in *Dai 62ki bengoshi dai 2kai yuso chosa dai 2ho* [The Second Report of the Second Mailed Questionnaire Survey of the 62nd Cohort Attorneys: From Bivariate Analysis to Multivariate Analysis] *supra* note 97, at 72 (finding three groups of lawyers—individual clients oriented, large corporate clients oriented, and small to medium-sized corporate clients oriented—which are determined by location of firm and law school); Akira Fujimoto, *Kyaria torajekutori: torokuchi, jimusho deno chii, torokuchi jimusho no henka* [Career Trajectory: Location of Registration, Position in the Firm, Changes of Location and the Firm] in *id.*, at 53 (comparing lawyers in provinces and in large firms in the cities, and finding the impact of law school); Nakazato et al., *supra* note 98, at 488 (concluding that elite lawyers stay in Tokyo to pursue highly profitable jobs while less-talented lawyers choose to stay in Tokyo with less profitable jobs or choose to move out in other areas);

lawyers from lower ranked schools (with lower GPAs) are more inclined to work for smaller law firms in provinces, where they mainly serve for smaller corporations and individual clients.<sup>108</sup> In addition, lawyers with longer experiences of practice tend to have higher incomes.<sup>109</sup> Second, lawyers' innate demographics—particularly gender—have certain influences on their legal careers. On average, female lawyers have shorter working hours, lower incomes, and their legal careers are more likely to be interrupted (e.g., lower positions at law firms and higher rates of moving out of private practices).<sup>110</sup> To be more precise, gender itself may have little impact on lawyers' careers when controlling for other factors, but female lawyers' careers are negatively affected when they have children and bear burdens of parental care.<sup>111</sup>

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Ikuo Sugawara, *Bengoshi no keizaikiban to soshojitsumu no genjo no chiikisa [Regional Differences in the Current Status of Lawyers' Economic Foundation and Litigation Practices]* in HENDOKI NO NIHON NO BENGOSHI [JAPANESE LAWYERS IN THE CHANGING PERIOD], *supra* note 95, at 127 (finding the regional differences between Tokyo and provinces in the unit price per case and the characteristics of clients and cases) for Japanese lawyers; Dau-Schmidt & Mukhopadhya, *supra* note 106, at 354–55 (finding the impacts of GPA, business type, location of firm, and size of law firm on lawyers' incomes); Dinovitzer & Garth, *supra* note 100, at 11, 33–40 (finding the strong association with law school and size of law firm); Heinz et al., *supra* note 101, at 170–71 (finding the impacts of law school, class rank, client type, and size of law firm on lawyers' incomes); Monahan & Swanson, *supra* note 105, at 470 (finding the impacts of GPA at law school and size of law firm on lawyers' salaries); Stake et al., *supra* note 104, at 969, 972 (finding the impacts of size of law firm and type of business on lawyers' incomes) for North American lawyers.

<sup>108</sup> See *supra* note 107.

<sup>109</sup> See, e.g., Nakazato et al., *supra* note 98, at 475 for Japanese lawyers; Dinovitzer, *supra* note 103, at 468; Heinz et al., *supra* note 101, at 170–71; Stake et al., *supra* note 104, at 969, 972 for North American lawyers.

<sup>110</sup> See, e.g., Ishida, *supra* note 94, at 423–27 (finding female lawyers' shorter working hours and lower incomes) for Japanese lawyers; Dau-Schmidt & Mukhopadhya, *supra* note 106, at 358 (finding female lawyers' lower incomes); Heinz et al., *supra* note 101, at 170–71, 263–69 (finding female lawyers' lower incomes and lower satisfactions with factors such as salary, chances of advancement, and control over amount of work); Kay et al., *supra* note 102, at 781 (finding that female lawyers are more likely to leave private practice); Monahan & Swanson, *supra* note 105, at 469 (finding female lawyers' lower salaries regardless of type of business and size of firm) for North American lawyers.

<sup>111</sup> See, e.g., Ishida, *supra* note 94, at 428–35 (finding the negative impacts for female lawyers of having a child on their income and working hours) for Japanese lawyers; Heinz et al., *supra* note 101, at 265 (finding the strongly significant gender differences on job satisfactions for lawyers with children while finding no significant gender difference for lawyers without children); Stake et al., *supra* note 104, at 972 (finding the negative impact of female with the burden of childcare on lawyers' incomes while not finding any negative impact of female without such a burden) for North American lawyers.

## 2. Control Variables

As has been implied by the studies above, professional circumstances would influence a variety of aspects of lawyers' practices. Therefore, in order to control their effects, I include years of practice, location of firms, and proportions of divorce cases in common as control variables. Some additional variables are included in each separate analysis to control the impacts of the lawyers' professional factors more precisely.

In the analysis of incomes, I include divorce lawyers' specialties in other practice areas as additional control variables. Lawyers earn incomes from all of their practice areas. In particular, the preceding studies of lawyers' careers have suggested that corporate lawyers earn more money than lawyers serving for individuals or small corporations.<sup>112</sup> As some divorce lawyers have another specialty in corporate clients,<sup>113</sup> it is essential to control for divorce lawyers' other practice areas when examining their financial successes in divorce cases.

In the analyses of fees and disputing behaviors, I use two professional factors as additional control variables: the proportion of female clients; and the proportion of custody disputes in respondents' divorce cases. The reasons for including these factors are that how lawyers take fees from clients and how they behave in disputes may depend on the characteristics of their cases and clients. In particular, disputes over child custody are usually more difficult to settle than pure financial disputes; at the same time, lawyers may feel it easier to charge higher fees to clients in custody disputes. Also, female clients more often lack financial resources in the beginning of the disputes compared to male clients—it is more difficult to charge a retaining fee to female clients. But, female clients are more likely to gain (rather than lose) economic benefits in the end through property division and to obtain the custody of children—it is easier to charge contingency fees to female clients. It would be plausible to assume that these clients' characteristics might influence divorce lawyers' fee systems and disputing behaviors.

Lastly, for lawyers' basic demographic factors, I include gender and age as control variables in common. It would be necessary to control for gender because the preceding studies of legal careers have shown the impact of lawyer's gender on legal practices.<sup>114</sup> Also, it would be preferable to control for age in addition to years of practice. Considering that age is often an important element for family issues, it would be natural to assume—particularly in the case of divorce lawyers—that age and years of practice may have different effects on their practices. Actually, the survey and the

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<sup>112</sup> See *supra* Section II.B.1.

<sup>113</sup> Approximately 20% of divorce lawyers have another specialty in corporate bankruptcies and in general corporate affairs, respectively. See *supra* Section II.B.1.

<sup>114</sup> See *supra* Section I.A.

interviews support this assumption. An intriguing example is the female clients' preferences for older lawyers; older divorce lawyers (not necessarily experienced lawyers) tend to have higher proportions of female clients.<sup>115</sup> On the other hand, as presented in the analyses below, years of practice also has a certain impact on divorce lawyers' incomes and fees.<sup>116</sup> Therefore, I control for both age and years of practice in the analyses.<sup>117</sup>

### C. Analysis of Incomes

The first analysis addresses the determinants of divorce lawyers' incomes. The amount of income is one of the most important aspects of lawyers' practices; it is a typical proxy variable to measure lawyers' successes—at least, financial successes.<sup>118</sup> Applying the Hypothesis—lawyers with divorce- or family-related private experiences are better as divorce lawyers—to lawyers' incomes, the proposition to be tested in the analysis of incomes is:

**Proposition A:** Divorce lawyers with divorce- or family-related private experiences earn higher incomes than divorce lawyers without those private experiences.

Table 4 reports the results of regressions of incomes (natural log transformed).<sup>119</sup> In Column (1), I control for the major professional factors

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<sup>115</sup> See *supra* Section II.B.2. When other factors are held equal in the regression analysis, one-year [ten-year] increase of lawyer's age increases the proportion of female clients by 0.71% [7.1%] ( $p < 0.01$ ) while the effect of years of practice is not statistically significant. Also, age ( $r = 0.18$ ) has a higher correlation with the proportion of female clients than the years of practice ( $r = 0.08$ ).

<sup>116</sup> See *infra* Sections III.C and III.D.

<sup>117</sup> The correlation of age and years of practice of respondents is not extremely strong ( $r = 0.85$ ). In Japan, the years spent until lawyers passed the bar exam greatly differ among lawyers. See *generally* Nakazato et al., *supra* note 98. Also, some lawyers became lawyers after experiencing another career. Consequently, a lawyer's years of practice does not always correspond to his or her age. VIF for each variable is not high (e.g., 3.32 for years of practice, and 3.22 for age, in the case of Column (1) of the income analysis in Table 4), meaning putting these two variables together in a model does not cause the issue of severe multicollinearity.

<sup>118</sup> In fact, a number of preceding studies of legal careers have addressed the determinants of incomes. See *supra* Section III.B.1.

<sup>119</sup> Logarithmic transformation is a commonly used technique for the analysis of variables that increase exponentially—e.g., incomes and populations. When you use a natural log transformed variable, you can observe associations between the variables by the percentage change (not by the raw unit). In unreported results, I have also run the regressions with raw incomes (not natural log transformed) as the dependent variable. Although  $p$ -values change slightly, the findings are robust. The raw income models indicate, other characteristics held equal, divorce lawyers with an experience of own divorce have JPY 2.9 million higher or JPY 2.2 million higher (in models with the same independent

(i.e., years of practice,<sup>120</sup> proportion of divorce cases, and location of firm) as well as the basic demographic factors (i.e., age and gender) to observe the effects of lawyers' divorce- or family-related private experiences (i.e., marriage, child, own divorce, and parents' divorce) on their incomes. Column (2) is a model further controlling for lawyers' professional factors pertaining to their specialties in other practice areas.

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variables as Columns (1) and (2) in Table 4, respectively) annual incomes than those who without such an experience.

<sup>120</sup> The squared term of years of practice (or age) is not added. It is sometimes useful to add the squared term when estimating lawyers' incomes because lawyers often have a peak of incomes in their mid-career. *See also infra* note 142. However, in the case of divorce lawyers in the present survey, there is no clear peak in the mid-career, and adding the squared term does not improve fit.

TABLE 4: REGRESSIONS OF LN INCOME

	(1)		(2)	
	Ln Income		Ln Income	
	OLS		OLS	
Marriage	0.114	(0.100)	0.100	(0.108)
Child	0.156*	(0.0900)	0.173*	(0.0930)
Own divorce	0.373***	(0.125)	0.286**	(0.138)
Parents' divorce	0.150*	(0.0876)	0.213**	(0.0955)
Age	-0.00351	(0.00798)	0.000950	(0.00767)
Gender (female)	-0.197**	(0.0973)	-0.108	(0.0968)
Years of practice	0.0153*	(0.00893)	0.00334	(0.00905)
Proportion of divorce cases	-0.00190	(0.00179)	-0.00275	(0.00188)
Location of firm (ref. others)				
Tokyo district	0.0589	(0.0934)	0.0506	(0.0912)
Provinces district	0.0213	(0.118)	0.0426	(0.118)
Specialty criminal			-0.0118	(0.0779)
Specialty juvenile			-0.0181	(0.0920)
Specialty inheritance			0.0756	(0.0861)
Specialty estate			0.0318	(0.107)
Specialty debt collection			0.0585	(0.115)
Specialty consumer			-0.0818	(0.144)
Specialty traffic accident			-0.00213	(0.0832)
Specialty labor			0.0146	(0.0821)
Specialty foreigners			0.186	(0.193)
Specialty personal debt			-0.0118	(0.0920)
Specialty corporate bankruptcy			0.282**	(0.119)
Specialty general corporate			0.212**	(0.0981)
Specialty IP			-0.204	(0.175)
Specialty medical			-0.00649	(0.130)
No other specialty			0.0906	(0.186)
Constant	2.064***	(0.248)	1.858***	(0.247)
Observations	186		185	
Adj $R^2$	0.118		0.158	

Notes: The table shows the results of OLS regressions of income (natural log of income) on various characteristics of divorce lawyers. Robust standard errors in parentheses.

\*\*\*  $p < 0.01$ , \*\*  $p < 0.05$ , \*  $p < 0.1$

I start with observing the impacts of the control variables (professional factors and demographic factors) on incomes. Column (1) presents that effects of gender and years of practice are statistically significant ( $p < 0.05$  and  $p < 0.1$  respectively). Based on the model of Column (1), one more year of practice experience raises incomes by 1.5%, and female lawyers earn 19.7% less incomes than male lawyers. These results of gender and years of practice are consistent with the preceding studies on lawyers' careers.<sup>121</sup> Also, as expected from the preceding studies, Column (2) shows that divorce lawyers who concurrently serve for corporate clients have higher incomes; more specifically, lawyers with an expertise in corporate bankruptcies have 28.2% higher ( $p < 0.05$ ), and those

<sup>121</sup> See *supra* Section III.B.1.



with an expertise in general corporate affairs have 21.2% higher incomes ( $p < 0.05$ ). At the same time, the impacts of gender and years of practice disappear when the respondents' other areas of specialties are controlled in Column (2). The results indicate that the effects of gender and years of practice may be attributable to divorce lawyers' margins for additional areas of specialties with corporate clients. In other words, it implies that gender and years of practice may not have impacts on divorce lawyers' pure earnings from divorce case practices.

Regarding the main issue—the impacts of private experiences—I find definite effects of own divorce experiences. The coefficient is large. Other factors held equal, divorce lawyers with a private experience of own divorce have 37.3% higher ( $p < 0.01$ , Column (1)) or 28.6% higher ( $p < 0.05$ , Column (2)) annual incomes. Furthermore, other divorce- or family-related experiences also have positive impacts on divorce lawyers' incomes. The results show that having a child increases incomes by 15.6% ( $p < 0.1$ , Column (1)) or 17.3% ( $p < 0.1$ , Column (2)). An experience of parents' divorce in the past increases incomes by 15.0% ( $p < 0.1$ , Column (1)) or 21.3% ( $p < 0.05$ , Column (2)).

In summary, the results of regressions of incomes support the Proposition A. Lawyers' private divorce- or family-related experiences—especially an experience of own divorce—do facilitate their financial successes as divorce lawyers. Based on their private firsthand experiences, those lawyers presumably have more passion in divorce cases and have better understandings of divorcing situations and clients' feelings.

A possible counter argument would be that the relationship between lawyers' own divorce and incomes may be spurious and not causal: for instance, workaholic lawyers earn more money as they work very hard, but they may be inclined to end up divorcing in their private lives because they are too busy working and sacrifice their family lives. Unfortunately, it is not feasible to directly examine this counter argument with the present survey data because it does not contain the information of respondents' working hours. However, my argument—there is a causal relationship between lawyers' own divorce and incomes—is plausible for four reasons.

First, the interview data is consistent with my argument. As indicated in Section III.A.2, the interviews with the lawyers who have an experience of divorce (or separation) implied causal relationships between their divorce experiences and professional practices. On the other hand, none of the interviewees implied their divorce was due to their workaholic.

Second, as described above, divorce- or family-related experiences *other than* own divorce have positive impacts on divorce lawyers' incomes as well. These results are consistent with my argument; a lawyer's divorce- or family-related experiences—his or her parents' divorce in the past and having a child—could facilitate his or her passion and an understanding in divorce cases. In contrast, the workaholic argument is not consistent with

these results because a lawyer's workaholic working style is not likely to cause his or her parents' divorce or to enhance having a child.

Third and most importantly, a positive impact of own divorce on incomes is found by the present study uniquely among divorce lawyers. It has not been found among lawyers in other practice areas or among workers in other occupations. Assuming the workaholic argument to be true, the positive association of divorces and incomes should be observed in lawyers and workers in general. Preceding studies of lawyers (i.e., legal career studies of lawyers in all practice areas) have not found any positive impact of lawyers' divorce on their incomes.<sup>122</sup> Also, to the best of my knowledge, no sociological studies have found any positive influences of divorce on incomes of general workers.<sup>123</sup> In Appendix B, I analyze datasets of whole lawyers and workers in other occupations in Japan to further supplement that the positive relationships of divorce with incomes are not found among them.

Fourth, under the workaholic argument, the positive association of divorces and working hours should be present. However, at least in the cases of lawyers in other areas and workers in other occupations, their divorce experiences are found to be not associated with their working hours—details are noted in Appendix B.

#### D. *Analysis of Fees*

The second analysis is about the determinants of lawyers' fees in divorce cases. The first analysis of incomes was from a relatively macro viewpoint, in which I assessed lawyers' overall financial successes. In contrast, the analysis of fees is at a more micro level, which focuses on lawyers' daily practices and successes purely in divorce cases. I use two dependent variables in this section's analysis—the *overall contingency ratio* and the *fee system for child support*.

As overviewed in Section II.B.4, the most common fee system for divorce cases in Japan includes a retaining fee, an overall contingency fee, and an economic-benefits-based contingency fee. As a general rule, lawyers ask for an overall contingency fee only if the outcomes were satisfactory to the clients. Therefore, I use the *overall contingency ratio*—the proportion of divorce cases (conciliation cases) in which the divorce lawyers actually requested an overall contingency fee to the client—for a dependent variable, which works as a proxy to measure each lawyer's overall success rate in the

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<sup>122</sup> See *supra* Section III.B.1. The preceding studies have not even examined the impact of own divorce; none of the studies listed in Section III.B.1 used divorce as an independent variable in their analyses.

<sup>123</sup> See, e.g., Shigeto Tanaka, *Gender Gap in Equivalent Household Income After Divorce*, in A QUANTITATIVE PICTURE OF CONTEMPORARY JAPANESE FAMILIES 321 (Shigeto Tanaka ed., 2013) (finding negative influences of divorce on household incomes of Japanese families).

divorce cases. It is difficult to define a “success” in divorce cases, but by using this *overall contingency ratio*, we can roughly figure out each lawyer’s overall success rate.

Another dependent variable is the *fee system for child support*. As described in Section II.B.4, there are two major systematic approaches to calculate the economic-benefits-based contingency fees in terms of child support—whether to include child support for two years or not to include child support at all in the calculation. I use these two systematic choices as a proxy to measure the divorce lawyers’ successes in disputes over child support. As noted in Section II.B.4, most interviewees did not raise any particular reason for their choices. Thus, I assume that their choices are made rationally (and maybe unconsciously) in accordance with the reality of their practices. If lawyers were more passionate and better at obtaining, increasing, or reducing child support, they certainly would like to systematically reflect the value of their works in their fee systems—that would be fairer for clients as an interviewee mentioned<sup>124</sup> and more economically rational for lawyers. There may be exceptional cases (e.g., regardless of their fee system, lawyers may give up taking fees in a case where the client has no money and the amount of child custody is very little), but it would be reasonable to assume that divorce lawyers who are more successful in child support disputes would be more inclined to adopt the two-year fee standard for child support as a default rule.

Therefore, applying the Hypothesis to the context of divorce lawyers’ fees, the two testable propositions in the analysis of fees are:

Proposition B-1: Divorce lawyers with divorce- or family-related private experiences end up requesting an overall contingency fee in a higher percentage of their divorce cases.

Proposition B-2: Divorce lawyers with divorce- or family-related private experiences have higher odds of adopting a calculation standard of economic-benefits-based contingency fee that includes the amount of child support for two years.

Columns (1) and (2) in Table 5 present the results for the *overall contingency ratio* (%) and the *fee system for child support*, respectively.

First of all, Column (1) reports that the effect of own divorce on the *overall contingency ratio* is significant ( $p < 0.05$ ). Other characteristics held equal, divorce lawyers with a private experience of own divorce eventually request an overall contingency fee to clients in 23.30% higher proportion of their divorce cases. This result confirms the Proposition B-1. In other words, we can say lawyers with personal divorce experience successfully provide satisfactory outcomes to the clients in 23.30% more divorce cases than

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<sup>124</sup> See interview with lawyer G excerpted in *supra* Section II.B.4.

lawyers without an own divorce experience in the past. Lawyers' private experiences of divorce facilitate their professional successes in each divorce dispute.

Turning to the control variables, the result indicates that lawyers with more (longer or denser) experiences of divorce cases are more skillful and better at handling divorce cases. It shows positive impacts of years of practice and the proportions of divorce cases while no other demographic or professional factors have significant effects: one more year of practice experience increases the overall contingency ratio by 1.66% ( $p < 0.05$ ); and 1% higher proportion of divorce cases raises the overall contingency ratio by 0.36% ( $p < 0.01$ ).

TABLE 5: REGRESSIONS OF FEES

	(1)		(2)	
	Overall Contingency		Fee Child Support	
	OLS		Logit	
Marriage	-6.777	(7.818)	-0.287	(0.587)
Child	-2.298	(7.633)	0.991*	(0.575)
Own divorce	23.30**	(10.85)	1.519	(1.025)
Parents' divorce	-6.101	(7.319)	-0.315	(0.638)
Age	-0.806	(0.668)	-0.0509	(0.0328)
Gender (female)	-11.89	(7.780)	1.016*	(0.583)
Years of practice	1.658**	(0.740)	-0.00125	(0.0401)
Proportion of divorce cases	0.364***	(0.130)	-0.0102	(0.0109)
Proportion of female clients	-0.0770	(0.146)	0.0213**	(0.0105)
Proportion of custody disputes	0.202	(0.156)	-0.00670	(0.0102)
Location of firm (ref. others)				
Tokyo district	2.127	(6.765)	1.123**	(0.488)
Provinces district	-8.195	(6.959)	0.521	(0.504)
Constant	69.22***	(22.57)	0.577	(1.076)
Observations	141		135	
Adj $R^2$	0.065		—	
Pseudo $R^2$	—		0.115	

Notes: Column (1) shows the result of an OLS regression of the proportion of overall contingency requested (%) (i.e., the proportion of conciliation cases in which respondents actually requested clients to pay an overall contingency fee at the end of the case) on various characteristics of divorce lawyers. Column (2) shows the result of a logistic regression of the fee system regarding child support (i.e., whether or not to include the amount of child support in the calculations of economic-benefits-based contingency fee). Robust standard errors in parentheses.

\*\*\*  $p < 0.01$ , \*\*  $p < 0.05$ , \*  $p < 0.1$

In Column (2), the effect of an own divorce experience is not significant on the *fee system for child support*. However, the result implies a significant positive effect of having a child ( $p < 0.1$ ). This result confirms the Proposition B-2 above. Presumably, lawyers who have own children are more capable of understanding clients' feelings toward children and have

more passion in gaining child support;<sup>125</sup> and they are more diligent and successful in disputes over child support. As a result, they systematically take fees for obtaining child support.

The result also indicates the impacts of some control variables. Both of lawyers' gender (female) ( $p < 0.1$ ) and the proportion of female clients ( $p < 0.05$ ) positively affect the *fee system for child support*. The effect of the proportion of female clients can probably be explained by the fact that female clients are more likely to claim for child support against the counterparty than male clients; therefore, it would be easier for lawyers with more female clients to systematically take fees for child support. The effect of gender can be explained from the same reason because female lawyers have a higher proportion of female clients.<sup>126</sup> The impact of Tokyo is also positive ( $p < 0.05$ ). One possible reason is that the need for obtaining child support may be higher for divorcing females in Tokyo; the rent is higher and they cannot expect housing or daily support from parents if they have migrated to Tokyo from other areas of Japan.

#### E. *Analysis of Disputing Behaviors*

The last topic is the determinants of divorce lawyers' disputing behaviors. As shown in Section II.B.5, divorce lawyers' strategic preferences among the three stages—negotiations, conciliations, and litigations—vary from lawyer to lawyer although conciliation cases are Japanese divorce lawyers' central jobs in general. From which stage they take cases and how they proceed with their cases after being retained differ from lawyer to lawyer.

I focus on the ratio of litigation cases to conciliation cases (the *litigation/conciliation ratio*) for the dependent variable.<sup>127</sup> This ratio represents the lawyer's disputing behaviors at the conciliations—more specifically, his or her avoidance of conciliations and failure frequencies to settle cases through conciliations. I suppose lawyers with divorce- or family-related experiences do not provide shoddy services to clients. They would be more diligent—not avoiding conciliations for their own convenience—and more successful in settling cases through conciliations without going to litigations. Consequently, applying the Hypothesis to the context of divorce lawyers' disputing behaviors, the proposition to be tested is:

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<sup>125</sup> See interview with lawyer A (who has a young daughter) excerpted in *supra* Section III.A.2.

<sup>126</sup> See *supra* Section II.B.2.

<sup>127</sup> In an unreported result, I have also run the regression of the ratio of negotiations to conciliations with the same independent and control variables. But, I have not found any significant effects of lawyers' divorce- or family-related experiences on their negotiation ratios.

Proposition C: Divorce lawyers with divorce- or family-related private experiences have lower ratios of litigations to conciliations.

Table 6 shows the result of regression of the *litigation/conciliation ratio*. Using the same dependent variables as the previous analysis of fees, I examine the effects of the private experiences of divorce lawyers (i.e., marriage, child, own divorce, and parents' divorce) while controlling for their professional and demographic factors.

TABLE 6: REGRESSION OF DISPUTING BEHAVIORS

	Litig./Concil. Ratio	
	OLS	
Marriage	8.970	(6.622)
Child	-4.133	(9.196)
Own divorce	-13.78**	(5.465)
Parents' divorce	3.048	(5.578)
Age	0.606	(0.525)
Gender (female)	-1.746	(5.506)
Years of practice	0.249	(0.604)
Proportion of divorce cases	-0.0104	(0.0849)
Proportion of female clients	0.0694	(0.0954)
Proportion of custody disputes	-0.0203	(0.125)
Location of firm (ref. others)		
Tokyo district	11.79**	(5.067)
Provinces district	9.707*	(5.622)
Constant	-6.095	(16.62)
Observations	183	
Adj $R^2$	0.098	

*Notes*: The table shows the result of an OLS regression of the litigation/conciliation ratio (%) on various characteristics of divorce lawyers. Robust standard errors in parentheses.

\*\*\*  $p < 0.01$ , \*\*  $p < 0.05$ , \*  $p < 0.1$

Among the lawyers' private experiences, having a history of own divorce has a significant impact. Other factors held equal, an own divorce experience reduces the ratio of litigations by 13.78% ( $p < 0.05$ ). This result supports Proposition C. Lawyers with an experience of own divorce are less inclined to go to litigations; in other words, they are more positive and persistent in using conciliations, compared to single or married lawyers. Based on their private divorce experiences, those lawyers are presumably more diligent to pursue settlements through conversations and better at settling cases.

Turning to the other control variables, almost no professional factors have an impact. Incidentally, however, I find an impact of firm locations. Compared to the other middle-sized cities, both lawyers in Tokyo district (+11.79%,  $p < 0.05$ ) and provinces district (+9.71%,  $p < 0.1$ ) have higher litigation ratios. I cannot provide clear explanations for these effects, but

some possible reasons are as follows. Lawyers in Tokyo are perhaps more cost- and time-sensitive as the legal market is more competitive in Tokyo; they may be more inclined to avoid taking time-consuming conciliations. In addition, lawyers in Tokyo are not acquainted with each other while most (at least half) divorce lawyers in smaller cities are usually acquainted with each other,<sup>128</sup> which may cause differences in settlement rates at conciliations. Alternatively, it may be due to the nature of the clients—clients in Tokyo may be more open to going to litigations than in other places. At the same time, in provinces district with a shortage of lawyers, lawyers are probably more inclined to limit their works for each client (i.e., avoid taking cases at the stage of conciliations) in order to manage an excessive number of clients per lawyer.<sup>129</sup>

#### F. *Summary of Findings*

In summary, the findings from all of the three analyses—incomes, fees, and disputing behaviors—support the Hypothesis. Lawyers with divorce- or family-related experiences (especially, an experience of own divorce) are better as divorce lawyers. Those experiences in private life facilitate their successes as divorce lawyers. Apparently, they have more passion in divorce cases and are more capable of understanding clients' feelings.

The analysis of incomes shows that lawyers with an own divorce experience have higher incomes; it also indicates positive effects of experiences of parents' divorce and having an own child on their incomes. I find from the analysis of fees that lawyers with an own divorce experience have higher odds of requesting an overall contingency fee to clients and that lawyers having an own child have higher odds of systematically requesting fees for child support. It can be interpreted that those lawyers have higher odds of “winning” the cases and child support respectively. Lawyers' own divorce experiences affect their disputing behaviors in divorce cases as well—they have lower ratios of litigations to conciliations. Those lawyers are presumably more diligent and more successful in settling cases through conciliations.

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<sup>128</sup> See interviews with all of the interviewees in provinces.

<sup>129</sup> See interview with lawyer F in *supra* Section II.B.5 (confessing that he tends to avoid conciliations for his own good); interview with lawyer E (mentioning her policy to avoid, whenever possible, taking conciliations); interview with lawyer L (sharing that he sometimes recommend clients to do conciliations by themselves partly because conciliations take time for him, but also because that is a realistic option for clients who are financially challenged). All of the lawyers above (F, E, and L) practice in provinces.

### G. Discussion

I find divorce lawyers' private experiences (especially, an experience of own divorce) to have great impacts on their daily practices. Further studies are needed to uncover details of the mechanisms. Also, the empirical scope of the present study is limited to the divorce lawyers' practices in Japan. However, this study's findings would offer implications to any legal professionals even outside of Japan. As presented in Section III.A.2, the broader Generalized Hypothesis could be: practices of the legal professionals can be affected by their emotional private experiences in the past, which are relevant to the cases. For instance, it may be applicable to divorce lawyers in the U.S. or any other countries. It may also apply to lawyers in other practice areas such as lawyers with a private experience of medical malpractice in medical cases. Perhaps, it may even apply to judges in divorce cases—judges with an own divorce experience may be more passionate and diligent in handling divorce cases.

The findings of the present study (and the possibilities of generalizations) have four implications—they are not merely fun facts. First, from a scholarly perspective, it suggests that legal scholars should not ignore the legal professionals' private factors when studying their practices and behaviors. Particularly in Japan, most legal scholars and practitioners still seem to have a blind faith that the legal professionals are so professional that they are not influenced by their personal and private experiences. But, their view is not consistent with the findings of the present study. Second, from a practical viewpoint, it would help individual lawyers to seek their ways to be successful lawyers. Uncovering the determinants of lawyers' practices and professional behaviors would help lawyers improve their practices. For instance, if a lawyer has an experience of own divorce, he or she is in a vantage position to succeed as a divorce lawyer. Third, it would be beneficial for clients when choosing lawyers that fit the best for them. If a person is looking for a good divorce lawyer, hiring someone with an own divorce experience could be one strategy.<sup>130</sup> That would increase his or her probability of retaining a good divorce lawyer. Lastly, it would give new insights into how to improve legal education. Legal education in many countries (including Japan and the U.S.) have traditionally valued classes of legal theories and legal logic. But, the results of the present study suggest that lawyers' emotional firsthand experiences make great impacts on their practices. Therefore, we may need to teach emotions in addition to logic. It may also be effective to introduce a new type of clinical programs that allow students to experience or simulate clients' roles in a variety of legal cases to gain "quasi-firsthand" experiences, in addition to the classical-type clinical programs where students mainly observe professional works and experience lawyers' roles.

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<sup>130</sup> In fact, some divorce lawyers indicate their personal divorce experience on their website or their profile page on the online database such as Bengoshi.com.



## CONCLUSION

Data on Japanese divorce lawyers presents the inter-person disparities in their practices (e.g., female clients, incomes, fees, and disputing behaviors). The disparities are quite large even within the same practice area of divorce.

I find that one intriguing determinant of Japanese divorce lawyers' practices is their personal private experiences related to divorce or family—especially, their own divorce experience in the past. Those who have divorce- or family-related experiences in private life engage in divorce cases more diligently and more successfully. An American jurist, Oliver W. Holmes, Jr. famously wrote that “[t]he life of the law has not been logic; it has been experience.”<sup>131</sup> Probably, we should now take it more seriously that the legal professionals' private experiences are also the important factors for the life of the law.

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<sup>131</sup> OLIVER W. HOLMES, JR. *THE COMMON LAW* 1 (1881).

APPENDIX A SUMMARY STATISTICS AND DESCRIPTIONS OF VARIABLES<sup>132</sup>

Variable	Mean ( <i>SD</i> ) [Range] or Ratio (%)	<i>N</i>	Description
<b><i>Dependent Variable</i></b>			
<i>For Analysis of Incomes</i>			
Income (JPY million)	10.12 (5.19) [1–22.5]	197	A lawyer's annual income (JPY million). A lawyer self-reported his/her annual income from eight categories (intervals). To convert the categories into a continuous variable, each category is substituted by its intermediate value: To calculate the intermediate values, the lower limit of <i>less than JPY 2 million</i> is presumed to be 0. The upper limit of <i>more than JPY 20 million</i> is presumed to be JPY 25 million at equal distance with the preceding interval.
<i>For Analysis of Fees</i>			
Overall contingency ratio (%)	54.09 (32.63) [0.00–100.00]	155	The proportion of conciliation cases in which a lawyer actually requested clients to pay overall contingency fees at the end of the cases (%). To the respondents who answered they normally include an overall contingency fee in their fee system, the survey asked the number of divorce conciliations in which they actually requested an overall contingency fee in the past ten years. It was divided by the number of divorce conciliations they handled in the past ten years (x100) to calculate the ratio.
Fee system for child support	53.33%	150	1 if a lawyer has the fee system to include the amount of child support <i>for two years</i> in the calculation of economic-benefits-based contingency fee (0 if he/she does <i>not at all</i> include the child support in the fee calculations). To the 188 respondents who answered they normally include an economic-benefits-based contingency fee in their fee system, the survey asked how to calculate the benefits from child support. The survey offered four options: (a) include entire period (1.07%), (b) include two years (42.78%), (c) not at all include (37.43%), and (d) others (18.72%). The minor responses (a)(d) are dropped from the analysis in order to focus on the two major systematic approaches (b)(c).
<i>For Analysis of Disputing Behaviors</i>			

<sup>132</sup> The second column reports the mean (*SD*) [range] for continuous variables, the ratio (%) of 1 for dummy variables, and the ratio (%) of each category for categorical variables, respectively.

Variable	Mean (SD) [Range] or Ratio (%)	N	Description
Litigation/conciliation ratio (%)	32.15 (28.39) [0.00–225.00]	199	The ratio of a lawyer's divorce litigations to divorce conciliations (%). A lawyer self-reported the number of divorce litigations he/she handled in the past ten years. It was divided by the number of divorce conciliations he/she handled in the past ten years (x100) to calculate the ratio.
<b>Independent Variable</b>			
<i>Private Experiences</i>			
Marriage	66.17%	201	1 if a lawyer is currently married.
Child	48.26%	201	1 if a lawyer has a child (including a child who already passed away).
Own divorce	7.46%	201	1 if a lawyer has experienced his/her own divorce in the past.
Parents' divorce	12.94%	201	1 if a lawyer has experienced his/her parents' divorce in the past.
<b>Control Variable</b>			
<i>Professional Factors</i>			
Years of practice	9.34 (8.02) [1–42]	198	A lawyer's years of practice as a lawyer. <sup>133</sup> Self-reported by years. In case his/her practice experience was less than one year, he/she was instructed to answer 0.
Proportion of divorce cases	27.89 (21.25) [0–98]	201	The proportion (%) of divorce cases in a lawyer's entire works based on his/her workload in the previous one year. Self-reported in percentage terms.

<sup>133</sup> With regard to years of practice, respondents were instructed to exclude years as a judge or a prosecutor (if any) because these legal professions are considered as different professions from lawyers in Japan. The legal professionals in Japan basically choose and pursue only one of the three professions (judge, prosecutor, and lawyer) for their entire career after completion of the program at the Legal Training and Research Institute of the Supreme Court of Japan (which is a one-year mandatory training program after passing the bar exam).

Variable	Mean (SD) [Range] or Ratio (%)	N	Description
Location of firm	Tokyo dist. 22.73%, Provinces dist. 18.18%, Others 59.09%	198	The location of a lawyer's firm, which is coded into three categories: <i>Tokyo district</i> , <i>Provinces district</i> , and <i>Others</i> . The reference category is <i>Others</i> . The survey asked the name of the court with jurisdiction for the location of a lawyer's firm. Japan has 50 main district courts and 203 branches (i.e., 253 jurisdictions in total). Among them, lawyers from 34 district courts and 31 branches (i.e., 65 different jurisdictions) responded to this survey. <i>Tokyo district</i> : the firm locates under the jurisdiction of Tokyo District Court (not including its Tachikawa branch). <i>Provinces district</i> : the firm locates under the jurisdiction of main district courts or branches in the rural area that have less than 100 lawyers in the jurisdiction. It includes respondents from seven main district courts and 23 branches. <i>Others</i> : the firm locates in other jurisdictions (i.e., in middle sized cities) than <i>Tokyo district</i> or <i>Provinces district</i> . It includes respondents from 26 main district courts and eight branches.
<i>Demographic Factors</i>			
Age	41.76 (10.25) [28–80]	197	A lawyer's age. Self-reported by years.
Gender (Female)	22.39%	201	1 if a lawyer is female.
<i>Extra Control Variable For Analysis of Incomes</i>			
Specialty criminal	41.00%	200	A lawyer's specialties in other areas than divorce cases. Self-reported from the following 14 areas in the survey. 1 if a lawyer has another specialty in criminal cases.
Specialty juvenile	22.00%	200	1 if another specialty in juvenile cases.
Specialty inheritance	56.50%	200	1 if another specialty in testaments or inheritances.
Specialty estate	21.50%	200	1 if another specialty in estates or constructions.
Specialty debt collection	22.50%	200	1 if another specialty in debt collections.
Specialty consumer	12.00%	200	1 if another specialty in consumer affairs.
Specialty traffic accident	57.00%	200	1 if another specialty in traffic accidents
Specialty labor	33.50%	200	1 if another specialty in labor.
Specialty foreigners	3.50%	200	1 if another specialty in affairs related to foreigners.
Specialty personal debt	46.00%	200	1 if another specialty in personal debt affairs.
Specialty corporate bankruptcy	17.50%	200	1 if another specialty in corporate bankruptcies.
Specialty general corporate	19.50%	200	1 if another specialty in general corporate affairs.
Specialty IP	5.50%	200	1 if another specialty in intellectual properties.
Specialty medical	9.50%	200	1 if another specialty in medical affairs.
No other specialty	5.50%	200	1 if no other specialty than divorce cases.

Variable	Mean ( <i>SD</i> ) [Range] or Ratio (%)	<i>N</i>	Description
<i>For Analyses of Fees &amp; Disputing Behaviors</i>			
Proportion of female clients	59.72 (21.78) [0.00–100.00]	199	The proportion of female clients in a lawyer's divorce conciliation cases in the past ten years (%). A lawyer answered the number of divorce conciliation cases he/she did in the past ten years and the number of cases with female clients among them. The latter was divided by the former (x100) to calculate the proportion.
Proportion of custody disputes	35.97 (22.40) [0.00–100.00]	196	The proportion of custody disputes in a lawyer's divorce conciliation cases in the past ten years (%). A lawyer answered the number of divorce conciliation cases he/she did in the last ten years and the number of cases that had disagreements on post-divorce child custody between the parties at the first hearing of the conciliations. The latter was divided by the former (x100) to calculate the proportion.

## APPENDIX B ANALYSES OF OTHER LAWYERS AND OTHER OCCUPATIONS

Appendix B presents that the positive impacts of divorce on income do NOT exist among lawyers in other practice areas and among workers in other occupations. The aim of this Appendix B is to confirm that the positive association between divorce and income is found uniquely among divorce lawyers. Based on this Appendix B, the potential counter argument (see Section III.B.4) that workaholic lawyers sacrificing their family lives are more inclined to earn higher incomes would be rejected, and my Hypothesis would be better supported.

I analyze two different datasets, both of which were provided for the purpose of academic secondary analyses by the Social Science Japan Data Archive, Institute of Social Science, the University of Tokyo. I first analyze a dataset based on a nation-wide survey of lawyers' economic basis, "Fact-finding Survey on Economic Foundation of Attorney Practices, 2010" (conducted and deposited by the JFBA, herein after the "JFBA dataset").<sup>134</sup> The JFBA has been conducting this kind of surveys in every ten years since 1980. The dataset I use is from their newest survey in 2010, which covers 1568 practicing Japanese lawyers in all practice areas (i.e., not screened by their practice areas).<sup>135</sup> The strength of the JFBA dataset is in its scale; it is the most extensive dataset of Japanese lawyers' economic basis. A weakness is that it does not contain detailed information regarding lawyers' marital status in the past. In that sense, the analysis of the impact of their divorce experience is a little unclear.<sup>136</sup>

Furthermore, I analyze the case of workers in other occupations in Japan. The dataset used is "National Family Research of Japan 2008 (NFRJ08)" (conducted and deposited by the National Family Research Committee of the Japan Society of Family Sociology, herein after the "NFRJ dataset"), of which respondents are the general public in Japan. This dataset includes 3,564 respondents who work at a gainful job all over Japan.<sup>137</sup> The advantage of the NFRJ dataset is that it contains detailed data of the respondents' marital histories, as it was the largest survey focusing on Japanese families. Thus, the analysis of the impact of divorce can be performed straightforwardly. The respondents of the NFRJ dataset are not lawyers; they are the general public (i.e., workers in all occupations). However, if the counter argument (i.e., the workaholic theory) were to be correct, should it also apply to workers in other occupations than lawyers.

The analyses of the two datasets are shown below. In a nutshell, contrary to the case of divorce lawyers, I find no positive association of divorce with income neither in the case of lawyers in all practice areas nor in the case of workers in other occupations (even in the case of limited workers in the lawyer-like type occupations). Therefore, the positive relationship between divorce experiences and incomes is found uniquely among divorce lawyers.

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<sup>134</sup> It is the same dataset that was used in the project of Sato & Hamano, *supra* note 95. See *supra* Section III.B.1.

<sup>135</sup> The survey was distributed to 10,000 sample lawyers (stratified random sampling), and the response rate was 17.95%. 227 out of 1,795 respondents, who answered they did not engage in law practice in 2009 or who had zero or less income in 2009, were excluded from the sample for the purpose of my analysis.

<sup>136</sup> See *infra* note 138.

<sup>137</sup> The survey was distributed to 9,400 sample citizens between the ages of 28 and 72 (stratified random sampling), and the response rate was 55.35%. 3,564 out of 5,203 respondents, who answered they work at a gainful job and had more than zero income in the previous year, are used for the purpose of my analysis (i.e., I dropped housewives and other non-workers).

### A. Lawyers in Other Practice Areas

The first analysis is on lawyers in all practice areas. I classify the respondents of the JFBA dataset into two groups to compare their incomes: (a) lawyers who have an experience of divorce (and are currently unmarried) and (b) any other lawyers.<sup>138</sup> There is no significant difference between the incomes of the two groups ( $p = 0.57$ , Welch's t test (two-sided)). The mean income of the former, those who have an experience of divorce (and with the current status of unmarried), is JPY 13.54 million ( $N = 34$ ,  $SD = 13.47$ ); and the mean income of the latter, any other lawyers (i.e., most of whom have no experience of divorce), is JPY 14.89 million ( $N = 1207$ ,  $SD = 17.99$ ).<sup>139</sup> There is also no significant difference in the annual working hours (mean = 2285.98,  $SD = 818.56$ )<sup>140</sup> between the two groups ( $p = 0.37$ , Welch's t test (two-sides)), indicating that lawyers' divorce experiences are not associated with their working hours.

For confirmation, I also perform a multiple regression analysis of incomes (mean = JPY 14.86 million,  $SD = 17.88$ ) (natural log transformed) to examine the impact of divorce when other major factors are controlled. I use lawyers' divorce experience (with the current status of unmarried) as the independent variable and other basic characteristics including age<sup>141</sup> (mean = 50.49,  $SD = 16.00$ , along with its squared term<sup>142</sup>), and gender (male 80.61%, female 19.39%) as the control variables. As shown in Table A1, I find no significant association of divorce with incomes while I find significant effects of all of the control variables at the 1% level: age (along with age squared), and gender (female).<sup>143</sup>

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<sup>138</sup> The classification is not clear-cut because the dataset does not contain the pure information of respondents' experience of divorce in the past. Thus, my analysis here is a little noisy. The questionnaire asked respondents' experience of marriage in the past. It also asked, only to those who are currently married, the occupation of respondents' partner. I treated the 40 respondents, who answered yes to the former question and did not answer the latter question, as those who have an experience of divorce (and with the current status of unmarried). The group of any other lawyers mainly covers those who have never experienced a divorce, but it possibly includes, in a small proportion, those who have an experience of divorce but currently remarried.

<sup>139</sup> In the JFBA dataset survey, the respondents were asked to answer the amount that respondents filled out in the filing of income tax report. That basically refers to the amount of revenue (i.e., sales) minus necessary expenses.

<sup>140</sup> Self-reported total working hours in the year of 2009.

<sup>141</sup> Six categories (intervals) for age are substituted with their intermediate value to be converted into a continuous variable (e.g., *twenties* into 25 years old).

<sup>142</sup> See *supra* note 120 for the reason of adding the squared term of age. The findings here are still robust when running a regression without the squared term, but adding the squared term largely improves the model (e.g., the adjusted  $R^2$  increases from 0.045 to 0.131).

<sup>143</sup> The findings are robust when the analysis is repeated with the model that includes annual working hours as an additional control variable.

TABLE A1: REGRESSIONS OF INCOMES OF LAWYERS IN ALL PRACTICE AREAS

	Ln Income	
	OLS	
Divorce	0.0275	(0.129)
Age	0.140***	(0.0116)
Age <sup>2</sup>	-0.00139***	(0.000114)
Gender (female)	-0.336***	(0.0625)
Constant	3.731***	(0.272)
Observations	1,238	
Adj R <sup>2</sup>	0.117	

*Notes:* The table shows the result of an OLS regression of incomes (natural log of income) on major characteristics of lawyers in all practice areas. Robust standard errors in parentheses. Dataset used: Fact-finding Survey on Economic Foundation of Attorney Practices, 2010.

\*\*\*  $p < 0.01$ , \*\*  $p < 0.05$ , \*  $p < 0.1$

### B. Workers in Other Occupations

Using the NFRJ dataset, I also analyze the impact of divorce on incomes in other occupations. I compare the incomes of the two groups: (a) workers who have an experience of divorce in the past and (b) workers who do not. I find a rather negative influence of divorce on workers' incomes. The group with a divorce experience has significantly lower incomes ( $N = 341$ , mean = JPY 3.23 million,  $SD = 2.51$ ) than the group without a divorce experience ( $N = 3,159$ , mean = JPY 3.92 million,  $SD = 2.86$ ) ( $p < 0.01$ , Welch's t test (two-sided)).<sup>144</sup> There is no significant difference in the monthly working hours (mean = 180.17,  $SD = 64.56$ )<sup>145</sup> between the two groups ( $p = 0.52$ , Welch's t test (two-sides)), suggesting that workers' divorce experiences are not generally associated with their working hours.

Additionally, I perform a regression analysis of incomes (mean = JPY 3.85 million,  $SD = 2.84$ ) (natural log transformed). The independent variables are respondents' divorce experience (9.71%) as well as currently married (76.80%) and having a child (79.24%). The control variables are age (mean = 47.97,  $SD = 11.35$ ), gender (female 44.95%), and years of education (mean = 13.17,  $SD = 2.18$ ).<sup>146</sup> There is no significant impact of divorce on incomes. There are also no significant effects of marriage and child while there are significant effects of the other major characteristics (age, gender, and years of education,) at the 1% or 5% level respectively (Table A2, Column (1)).<sup>147</sup>

<sup>144</sup> Fourteen categories (intervals) for income are substituted with their intermediate value to be converted into a continuous variable (e.g., from JPY 3 million to less than JPY 4 million into JPY 3.5 million). The highest category, JPY 12 million or more is substituted with JPY 12.5 million, presuming it has the same distance as the preceding interval.

<sup>145</sup> Self-reported average working hours on a working day are multiplied by the current working days per month to calculate the respondents' monthly working hours.

<sup>146</sup> The highest schools that the respondents attended are converted into years of education they received (i.e., a continuous variable): junior high 9, high school 12, vocational college 14, two-year college/technical college 14, university (four-year undergraduate) 16, university (six year undergraduate)/graduate school 18.

<sup>147</sup> The findings are still robust when the analysis is repeated with an additional control variable, the monthly working hours.



Furthermore, I perform the same analyses with the limited workers who are in the similar type of occupations as lawyer (i.e., the *specialized and technical type* occupations). In the NFRJ dataset, all of the respondents' occupations are categorized into seven types (self-selected by the respondents), and one of the types is the *specialized and technical type* (e.g., *physician, lawyer, teacher, engineer, nurse, writer, designer, editor and etc.*).<sup>148</sup> However, the qualitative features of the results within the *specialized and technical type* occupations are still similar to the case of all occupations. There remains no positive impact of divorce on incomes. Actually, there is a negative impact when comparing the two groups: *specialized and technical type* workers with and without a divorce experience. The mean income of those whom with an experience of divorce is JPY 4.08 million ( $N = 50$ ,  $SD = 2.62$ ) while that of those whom without the experience is JPY 5.14 million ( $N = 603$ ,  $SD = 2.93$ ) ( $p < 0.01$ , Welch's t test (two-sided)). There is no significant difference in the monthly working hours between the two groups ( $p = 0.80$ , Welch's t test (two-sides)). Then, Column (2) in Table A2 presents the result of a multiple regression with the same variables as the case of whole workers; there is no significant effect of divorce (as well as marriage and child) on incomes.<sup>149</sup>

TABLE A2: REGRESSIONS OF INCOMES IN OTHER OCCUPATIONS

	(1)		(2)	
	Ln Income All Occupations OLS		Ln Income Lawyer-like Occupations OLS	
Divorce	0.00769	(0.0451)	-0.0998	(0.113)
Marriage	-0.0639	(0.0398)	-0.0518	(0.0882)
Child	-0.00516	(0.0382)	0.0855	(0.0792)
Age	0.00245**	(0.00116)	0.00408	(0.00263)
Gender (female)	-1.014***	(0.0266)	-0.714***	(0.0655)
Years of education	0.0943***	(0.00583)	0.0789***	(0.0144)
Constant	0.159	(0.107)	0.311	(0.261)
Screened by occupations	No		Yes	
Observations	3,467		650	
Adj $R^2$	0.378		0.248	

Notes: Columns (1) and (2) show the results of OLS regressions of incomes (natural log of income) on major characteristics of workers. Samples in Column (1) include workers in all occupations. Samples in Column (2) are limited to lawyer-like workers, who are in the "specialized and technical type" occupations. Robust standard errors in parentheses.

Dataset used: National Family Research of Japan 2008 (NFRJ08).

\*\*\*  $p < 0.01$ , \*\*  $p < 0.05$ , \*  $p < 0.1$

<sup>148</sup> Other six types are: *administrative type; clerical and marketing type; sales and service type; physical labor type; agriculture, forestry and fisheries type; and others.*

<sup>149</sup> The findings are still robust when an additional control variable, the monthly working hours, is added in the model; the effects of divorce, marriage, and child are not significant while the effects of all the control variables (including age) are significant at the 1% level.