

Breaking Down Barriers: Unveiling Gender Biases in Contract Law

Yu Yilin – Year 3 – Department of Law, Faculty of Law
Host Institution: University College London, United Kingdom
HKU supervisor: Mr. David Bishop
Internship supervisor: Dr. Niamh Connolly



INTRODUCTION

The Feminist Judgments Project, spanning various jurisdictions, stands as a significant and commendable endeavour. Its primary goal is to critically assess real-world judicial decisions through a feminist perspective. While these discussions have been extensively explored within the realm of criminal law, there has been relatively limited discourse on this topic within the domain of contract law—a private commercial sphere characterized by arm's length transactions. This research examines the often-overlooked issue of gender discrimination within the context of contract law and uncovers the challenges faced by working-class women in contractual relationships. This study strives to shed light on the factors that perpetuate their disadvantaged position in the marketplace.

OBJECTIVES

This research endeavours to explore the challenges faced by working-class women in private contractual relationships, critically assessing the rigid and certainty-oriented nature of contract principles that may prioritize objective standards over contextual considerations. It also aims to reveal the limitations of current state-level legislation in the UK for effectively combating structural discrimination within the law of contracts. Furthermore, the research advocates for a comprehensive reevaluation of the concept of gender justice, calling for a rethinking of gender justice in contract law.

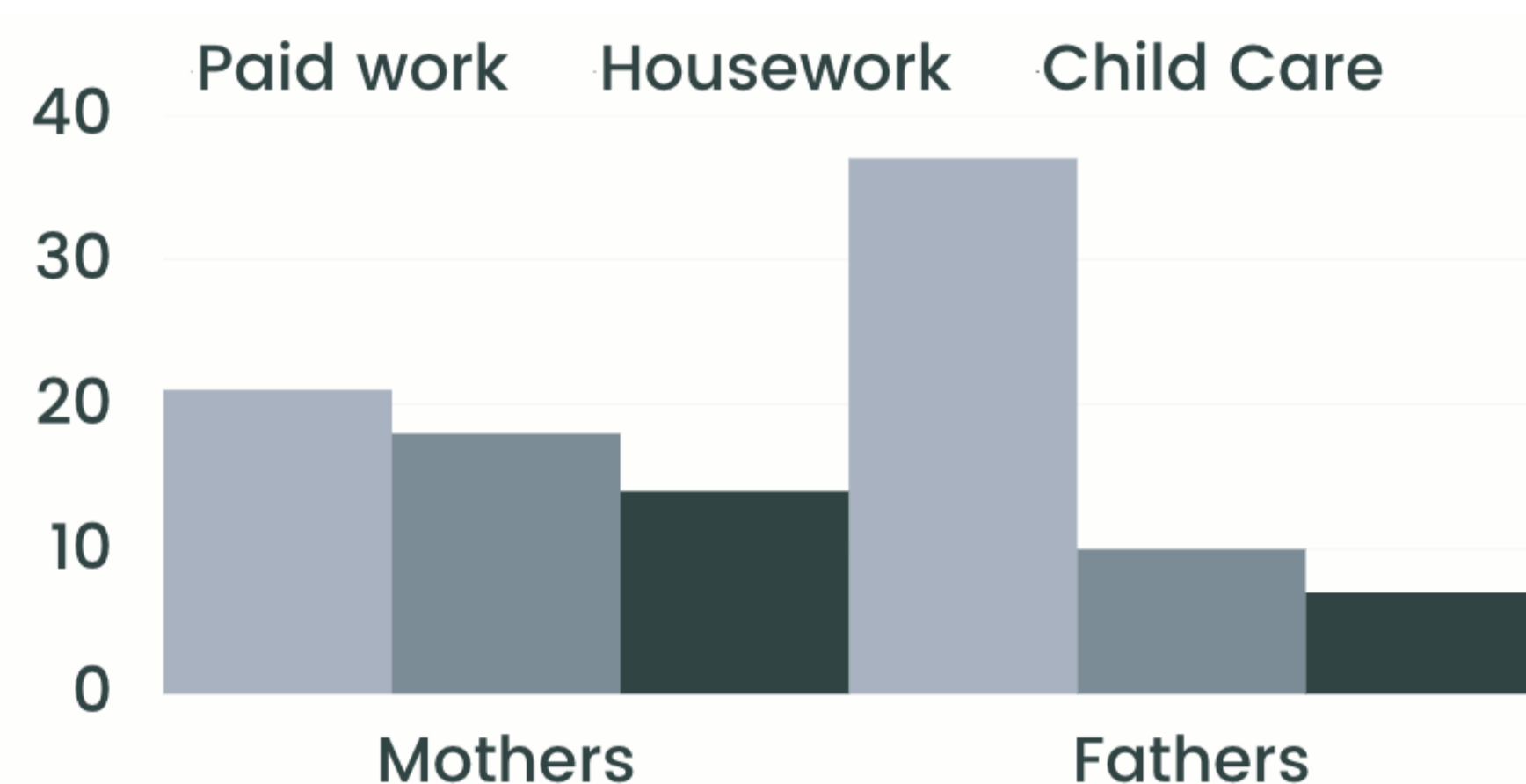


BACKGROUND

Societal Expectation

The cruel reality is that women still shoulder a significantly larger share of household chores compared to their male partners, even when they act as the primary breadwinners for their families. This imposed caregiving role translates into a “high discount rate” for women in market dealings, as they are expected to be more “anxious to cut the deal” and thereby tend to “take the short end of the stick” in their negotiations both in market and nonmarket. Despite a recent resurgence in the number of women opting to stay at home, with approximately 85% citing the need to care for their families as the primary reason, many women also express a strong desire to work and pursue their own ambitions, revealing the conflict between individual choice and family obligations.

Average number of hours per week spent on...



Source: Pew Research analysis of the American Time Use Survey

Imposed Inferiority

- I. Gender pay gap:** Approximately 80% of UK employers continue to exhibit a gender pay gap, favouring men over women on average. This disparity is further exacerbated by the disproportionate representation of women in low-paying sectors, including health and social work. This situation is underpinned by the persistent stereotype that women are better suited for lower-level positions, which in turn reinforces a societal trap hindering their advancement in the labour market.
- II. Gendered perception of family roles:** Women are often expected to prioritize their family needs over career advancement, leading them to frequently opt for “economically inactive” status or low-paying, part-time, and flexible work arrangements to meet caregiving responsibilities. This choice to remain “economically inactive” can, in turn, result in limited financial independence, rendering women more susceptible to being the ones whose careers are easily sacrificed when family demands arise.
- III. Lower confidence and expectations in contract negotiations:** Women, facing less favourable economic circumstances, often exhibit lower confidence in contractual negotiations. This reduced confidence makes them more likely to accept unfair contract terms and enter into agreements that are less advantageous compared to those secured by their male counterparts.

FINDINGS & CONCLUSIONS

Historically, contract law has undervalued the economic worth of women’s domestic work, contributing to gender bias and discrimination. Women fulfilling gendered caregiving roles often find themselves penalized, with their sacrifices and contributions frequently going unrecognized within contract law. This vulnerability not only persists but also extends into the marketplace. Modern contract law continues to exhibit subtle gender biases, rendering it challenging for women to access adequate legal protection. Practices such as gender-based pricing are difficult to challenge, and existing legislation falls short in addressing these issues. Furthermore, the objectivity emphasized in contract law inadvertently reflects male values, perpetuating a hierarchical system that suppresses women’s perspectives and reinforces gender biases. This prioritization of certainty and objectivity in contract law unavoidably leads to unfavourable outcomes, as real-life contextual factors affecting female contracting parties are often disregarded.

REFERENCES:

- McMunn, A., Bird, L., Webb, E., & Sacker, A. (2019). Gender divisions of paid and unpaid work in contemporary UK couples. *Work, Employment & Society*, 34(2), 155–173.
Parker, K. (2013, March 14). *Modern Parenthood* | Pew Research Center. Pew Research Center’s Social & Demographic Trends Project.
Rose, C. M. (1992). Giving Some Back – A Reprise. 44 *Fla. L. Rev.* 365



ACKNOWLEDGEMENTS: I wish to express my sincere appreciation to Dr. Niamh Connolly and Anna Stelle, my research supervisors, for their invaluable guidance and mentorship throughout my research and writing process; to Mr. David Bishop for his unwavering support of my research program; to the HKU Horizons Office for their continuous support; and to the Laidlaw Foundation for this valuable opportunity and gratuitous funding.