



UCL

**Laidlaw Scholars Leadership and Research Programme
- Research Report**

**CAN CONTRACT LAW BE UTILISED TO FURTHER SOCIAL
EQUALITY?
AN ANALYSIS OF THE USE OF CONTRACT REMEDIES TO
TARGET LGBT+ INEQUALITY**

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Research Problem & Question

Private law is often ignored as a method for achieving social justice for disadvantaged groups¹. However, some scholars – particularly those in the United States – have noted the use of unorthodox areas such as contract law to further rights equalities². In the United Kingdom, cases of direct discrimination are dealt with using human rights law³, or through the Equality Act 2010 – which provides its own remedies⁴. Beyond this, cases involving contracts and particularly where a breach may affect someone excessively due to their personal characteristics are ignored, with English contract law providing few and relatively fixed remedies for non-pecuniary loss. My research focuses on a set of English contract law cases and critiques the available remedies as short sighted in their ability to improve social inequalities through private law remedies. It also looks at the reasons why the American legal system is better suited to using contract to further social equality, and whether English contract law should indeed encompass a broader set of non-pecuniary losses as a way to address aggravated harms felt by disadvantaged groups such as LGBT+ people whilst contracting.

Hence, the overarching question of my research is as follows:

“Should, and how should Contract Law remedies (for non-pecuniary losses) be broadened in order to reduce social inequalities for LGBT+ people?”

Methodology

Developing my research question

An initial challenge faced was that of identifying a suitable research question. The initial proposal was to undertake a broad critical analysis of English contract law, and its inclusion of disadvantages faced by LGBT+ people. In preliminary reading, it was found that very few pieces of research had been conducted in this field, and that the scope of my research would need to be refined in order to find relevant pieces within the time frame of the project.

¹ LRIRE, ‘Breach by Violence: The Forgotten History of Sharecropper Litigation in the Post-Slavery South’ (*UCLA Law Review* 28 November 2022) <<https://www.uclalawreview.org/breach-by-violence-the-forgotten-history-of-sharecropper-litigation-in-the-post-slavery-south/>>. 680

² Jackson Springer, ‘CONTRACTS and HOMOPHILE LEGAL STRATEGY’ (2024) 124 *Columbia Law Review* 459 <<https://www.jstor.org/stable/27305116>>.

³ Human Rights Act 1998, s.1

⁴ Equality Act 2010, s 119

It was then necessary to begin identifying critical pieces which linked LGBT+ rights and social disadvantages with contract in the first place. One major influential article found was ‘CONTRACTS and HOMOPHILE LEGAL STRATEGY’⁵ written by Jackson Springer in the Columbia Law Review. In this article, Springer began by identifying the lack of research of private law’s uses in furthering rights for disadvantaged groups, particularly in comparison to public law which forms the basis for most substantial and well known civil rights law (i.e the Human Rights Act in the UK). Springer then took a detailed look into the ways LGBT rights groups in the 1960s used contract law in order to retain access to community spaces and uphold their rights where constitutional law fell behind. Finally, the article suggested areas for further research, including the fact that contract law in particular often fails to offer suitable solutions due to its restrictions against awarding damages for non-pecuniary losses. This area of research is particularly interesting as it looks at how non-traditional losses could be considered to remedy harms faced by LGBT+ people when contracting, which are likely to be primarily social rather than economic harms.

This project’s supervisor then assisted in identifying English cases in which contract law had been used similarly to Springer’s in the US to further rights of disadvantaged groups. One significant case was *Constantine v Imperial Hotels Ltd* in which a black man was denied a room due to his race, in breach of his contract and tort law. The claimant in this case utilised private law rights in order to receive equal service to that received by white guests at the hotel. It was additionally found by the court that despite no pecuniary loss having occurred to the claimant, he could be awarded damages. This further highlighted the use of non-pecuniary losses as necessary remedies in some cases for disadvantaged groups in cases of breach.

Upon reviewing these readings and cases and consulting both project supervisors, it was decided the research question would be:

“Should, and how should Contract Law remedies (for non-pecuniary losses) be broadened in order to reduce social inequalities for LGBT+ people?”

Conducting research & case finding

Once the research question was determined, it was then necessary to set out the process in which research was conducted. After reflecting on potential challenges and consulting both project supervisors, this process was broken down into three stages:

1. Identifying potential non-pecuniary harms faced by LGBT+ people
2. Finding and analysing relevant case law

⁵ Supra, no.2

3. Researching the current system of losses in English contract law and its philosophical reasoning

These stages were chosen as they suitably covered the harms that may be faced when contracting, where and when they may have been resolved or mentioned in English case law, and how they are or are not resolved by current legal mechanisms. It also initially presented a linear path to identifying potential gaps in the law. However, one major problem encountered with this structure was frequently the large underlying philosophical basis as to why case law did not appear at first. This will be addressed in more detail below in the report, however it resulted in this structure at times failing to deliver results in the linear way intended.

Identifying potential harms and disadvantages

This section involved searching online databases for primary and secondary research into the disadvantages faced by LGBT+ people. It began by use of keyword search on JSTOR, Google Scholar, and UCL Library Services Explore. These databases were used as they offer a wide range of papers and results are easily filterable. This aided this part of the research due to the large amount of previous studies in social disadvantages faced by LGBT+ people.

It first identified the types of disadvantaged that could be faced, and a summary of these was then abstracted from a series of studies. In order to ensure reliability and suitability of the studies identified, most papers drawn from were those already frequently cited in large amounts of papers. Moreover, where possible it was made sure that research into disadvantages was conducted in the UK to best apply them to English law later on.

Once a variety of disadvantages and harms were identified, these were then sorted into groups to determine relevance in contracting. Ultimately, this required identifying the harms that could commonly occur due to breach of contract whilst also applying to an exaggerated extent for LGBT+ people. This meant certain disadvantages – such as higher rates of mental health disorders, for instance – were discarded as they would not apply to all those identifying as LGBT+ people, and could occur in other groups.

Identifying cases

This area of made up the bulk of the research conducted. In order to identify scenarios where the harms found above have or could be resolved in cases of breach of contract, it was necessary to conduct a deep search of case databases.

It was determined the best way of doing this would be through keyword search, using the major case databases *Westlaw UK* and *Lexis+*. This would ensure any reported case, including those where breach nor sexuality were the major issue would still be found due to

the mention of relevant words. This did however present some problems detailed further below.

It was first necessary to use the filter tool to limit cases to those concerning contract law. Other public law and human rights cases were identified in the initial reading stages and so were unnecessary in this section.

Then, a list of keywords/terms to use were devised as listed below:

“breach of contract”

“breach”

“commercial”

“service”

“damages”

“sexuality”

“gender identity”

“gay”

“lesbian”

“LGBT”

“transgender”

“equality”

These terms were identified due to their widespread use in the preliminary reading found above. One drawback of these limited terms is that many related words to the LGBT+ community may have been missed, particularly slang or informal terms. Ultimately, though, use of formal terminology is most common within court judgments, and many slang terms have alternative meanings which could have unnecessarily prolonged detailed search of cases.

One major issue found with searching cases with keyword terms such as this is that in English law abstraction of the person is commonplace. This results in details such as a claimants’ sexuality or gender identity being scarcely mentioned if is deemed irrelevant. The concept of an abstract ‘reasonable person’ in the law is widely discussed by scholars⁶, and

⁶ For more detail on this, see: Mayo Moran, ‘The Reasonable Person: A Conceptual Biography in Comparative Perspective’ (2010) 14 Lewis & Clark Law Review 1233 <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/lewclr14&div=50&id=&page=>>., and ‘Queering the Subject(S) of Citizenship: Beyond the Normative Citizen in Law and History - ProQuest’ (Proquest.com2025) <<https://www.proquest.com/docview/305314669?pq-origsite=gscholar&fromopenview=true&sourcetype=Dissertations%20%20Theses#>> accessed 28 July 2025.

means that in many cases of breach it is impossible identify if sexuality or gender identity was a factor in harms experienced.

Due to this, the case searching process as detailed above was partially unsuccessful in finding relevant case law to analyse to determine whether remedies are suitable against the exaggerated harms faced by LGBT+ people.

However this issue played an important role in shaping the remainder of the project. It was determined that working on theoretical examples would provide insufficient basis for conclusion. As such the gaps in mention of identity due to abstraction were incorporated into the project – under advice from both project supervisors. It was decided to rank cases using a traffic light system of those cases which could be drawn upon in order to identify issues with current remedies on offer, in addition to the problems that abstraction presents in issuing remedies where they may be required.

Another major issue identified was the return of public law cases in searches. This occurred, even despite filtering case law to contract cases, due to the use of public law remedies in cases of discrimination within contract. This, while initially regarded as irrelevant, again became helpful in determining when public law remedies (such as damages under the Equality Act) were most suitable and gaps where contract law remedies could step in. However, some cases which wholly regarded human rights law continued to come up in searches, and these were rated red as wholly irrelevant using the traffic light system devised above.

Ultimately, whilst this process of case searching did not provide the initially intended results, it still proved insightful in providing areas that public and private law lacked sufficient remedies to harms felt to an exaggerated extent by LGBT+ people. Moreover, the issues encountered were largely a result of abstraction in English case law rather than keyword search, which make finding many cases involving sexuality and gender identity impossible using legal databases.

Researching the current system of damages for non pecuniary loss, and philosophical background

The final area of research involved identifying the bounds of the current system of damages and loss within English contract law and its philosophical justifications.

Multiple legal textbooks were consulted to develop a comprehensive understanding of current doctrines of damages and losses. This included those written by Mindy Chen-Wishart and Ewan McKendrick respected internationally and frequently cited in English contract case law.

One problem identified was in finding detailed coverage on rules on non-pecuniary harms and losses. Only one textbook, written by Peel, gave a detailed analysis of the current rules

on this area. This may mean that rules guiding the doctrine may exist or have developed since the time of Peel's writing.

Under advice from the project supervisor, it was determined that a justification for implementation of remedies for disadvantaged groups must be identified. In order to find this, a similar keyword/term search was conducted on JSTOR, Google Scholar and UCL Library Services Explore. These included the terms:

“philosophy of contract law”

“collective justice”

“distributive justice”

“equality of bargaining power”

“freedom of contract”

“contract remedies”

“damages”

Similarly to the preliminary reading above, these provided a large amount of results. In order to focus reading, these results were filtered to those including philosophy on damages and remedies. This meant many results regarding the entering or bargaining element of contracting were ignored. While this does exclude some philosophical justification for contract law concepts more broadly, these were instead summarised through use of textbooks on general philosophy on contract law which offered condensed forms of this knowledge acceptable for the limited time frame.

The main problem encountered here is that noted above in that many results would have been useful to have been found at the beginning of the project. Issues detailed above regarding lack of suitable case law and lack of contract law remedies' use in cases involving LGBT+ people (similar to the Springer article from the US noted above) were partially explained by philosophical concepts underpinning English law. Ultimately though, identifying these challenges before reading them still proved helpful in pinning down exact areas for improvement.

Conclusions & reflections

The conclusions below are those from case analysis, followed by a general project conclusion including conclusions from a cross analysis of the primary research and secondary research used. Finally, reflections on the challenges encountered are detailed.

English case law conclusions

As detailed above, cases were initially assessed using a traffic light system of red (irrelevant), amber (partially relevant), and green (relevant). Amber and green rated cases were then analysed using the critical questions to determine if current contract or public law remedies are sufficient to harms suffered as a result of breach of contract.

Irrelevant	118
Partially relevant	6
Relevant	4
Total	128

Irrelevant cases

The irrelevant cases were those which wholly or mostly involved questions on constitutional or public law and had no relation to contracts or breach. The large volume of irrelevant cases across the search of 3 databases suggests that abstraction of identity is occurring for cases involving contract law.

Partially relevant cases

The partially relevant cases were those which involved a breach of contract and LGBT+ identity. Most cases (5 out of 6) in this category were wholly resolved using public law remedies, such as under the Equality Act, suggesting potential for contract law remedies if the pre-existing solutions are deemed insufficient.

Relevant cases

All relevant cases involved a breach of contract directly linked to sexuality, and where there is at least a clear potential for the use of contract remedies. The low number of cases found (4 out of a total 128 found) suggests the case for expansion of remedies - to significant effect on the current law - may be limited.

Individual case analysis questions

Out of all 10 partially relevant or relevant cases:

Question	Yes	No
Were relevant harms faced?	10	
Were these a result of breach of contract?	8	2
Were these harms felt to an exaggerated extent, or as a result of, sexuality?	8	2
Were harms dealt with by existing means/remedy?	6	4

These results suggest a large amount of cases, even those labelled as ‘partially relevant’ (not a direct link between sexuality and breach), where LGBT+ identity is involved result in harms faced to an exaggerated extent. While harms are dealt with in most cases (6/10), they are still left unresolved where public law remedies are unavailable. This is likely partially due to the abstract nature of contract law legal tests. Even where public law remedies are available, they may nonetheless be insufficient. Evidence from reading conducted within this project suggests in many cases they are.

Project conclusion

“Should, and how should Contract Law remedies (for non-pecuniary losses) be broadened in order to reduce social inequalities for LGBT+ people?”

The first part of the research question relies partly on the primary data gathered in this project and broader philosophical justifications read during the project. The primary data seems to suggest that non pecuniary losses (harms) are often felt to an exaggerated extent due to sexuality or gender identity when a breach of contract occurs. Moreover, harms are sometimes not dealt with at all by existing remedies, suggesting there is scope for contract law remedies such as damages to be expanded in order to compensate for these. However, the evidence gathered in this study was extremely small, providing limited solid backing to these claims. Instead, the data largely revealed that abstraction – where sexuality and gender identity are not mentioned, but may be relevant – is likely prevalent. Therefore, in order to conduct a more successful study, this major issue will need to be resolved.

Philosophically, it appears that distributive justice already occurs in many contract law remedies and tests. This suggests that there is scope to provide for exaggerated harms and place some responsibility on contract-makers to take into consideration their actions (in breach) on LGBT+ people. This also aligns with current British standards on ‘good faith’ contracting. However, it is clear that any expansion of damages to include a non-pecuniary loss of dignity, for instance, must be limited in its expense to ensure they align with principles against punitive damages.

The second part of the research question is related to how the remedies should be broadened.

It is clear from the preliminary reading that while there are links between sexuality and gender and experiences of severe mental conditions, for example, current remedies should not be expanded due to these links alone. This is because it cannot be assumed an LGBT+ person experiences something worse in every case, and it may be impossible to know this entering into a contract.

Overall, the stronger argument would be for the addition of additional non-pecuniary harms such as loss of dignity, or loss of access to service. These harms frequently occurred in cases studied, but were not always resolved under public law remedies, and cannot currently be remedied under contract law. Furthermore, they require relatively minor changes to damages law (although will still have a large impact) in an expansion of the already accepted non-pecuniary harms.

Reflections

The major challenges of the project have been discussed briefly above, and largely revolved around the lack of relevant cases, in addition to unexpected bigger picture questions.

A significant difficulty encountered was the inaccessibility and complexity of relevant case law, which proved challenging to locate. It is likely this is largely due to abstraction in judgments, and this despite becoming a major obstacle in the project provided large insight into a way to improve the law to identify the harms seen in this project more easily and resolve them. Judicial discretion in deciding the relevance of identity may also present an issue, and there is little further research on this.

The project also unexpectedly brought to light deeper philosophical questions underpinning fundamental legal concepts, such as dignity, identity, and recognition, which were not initially anticipated. Reflecting on this, it became evident that a more effective approach would have involved starting with these foundational philosophical frameworks to better understand and contextualise the judicial reasoning encountered. This would have provided a more coherent lens through which to interpret the development and potential expansion of non-pecuniary harms in this evolving area of contract law.