

The Tort of Deceit & Paternity Fraud: *P v B* (Paternity Damages for deceit) [2001] Revisited

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Abstract: *Paternity fraud happens when women make representations to their male partner that he is the biological father of their child knowing that this may not be true because they have undisclosed sexual relationships with other men. Where the man acts on this information and the paternity of the child is subsequently discovered through DNA testing. With the shift from the parental rights regime to the parental responsibility system in most common law jurisdictions, more men are obliged by law to pay for the upkeep of their "child" or "children". This legal conception of fatherhood has led to an increasing number of voices demanding that a legal remedy be sought for men victimized by paternity fraud. While there are several cases at the heart of paternity fraud, the case of *PvB (Paternity Damages for Deceit)[2001]* is a very interesting one. This article revisits this case making some very compelling discussions and analysis. It also reviews some of the flaws of the reproductive rights argument. It is of the position that the reproductive rights argument may be flawed since reproductive health rights have not been normatively expressed in any multilateral treaty (or in customary international law for that matter). It highlights the implications of the tort of deceit in paternity fraud cases for both married and divorced spouses. It also highlights how tort of deceit can be applied to fairly represent the interest of fathers and their needed relationship with their biological child.*

Keywords: *Paternity fraud, Tort of Deceit, Children Welfare and Rights, Family Law, Res Judicata.*

I. Introduction

Classical moral philosophy views a child as the property of their biological parents.^[1] The opposing view is that children can never be private property.^[2] To those who believe that children belong to their biological parent, the law is justified in conceptualizing parental authority as a right in the manner that United Kingdom (UK) common law viewed the parent-child relationship^[3]. Therefore, UK common law sees marriage as a civil contract created by a man for the benefit of their unborn children.^[4] From this perspective, UK common law only gave children born in wedlock rights that are created from a legal obligation imposed on their fathers.^[5] All this to say that in the UK common law system, the conception of fatherhood is a legal obligation to pay for the upbringing of their children. Hence the rebuttable presumption of legitimacy existed as a safeguard against married men suffering the indignity of paying for the upbringing of another man's child without their informed consent. ^[6]

The idea that children can never be owned by their parents was first advanced by the philosopher John Locke.^[7] For Locke, parental authority is a duty to care for a child until the minor can fend for themselves. Hence, parental authority over a child can be extinguished if it is in the best interests of a child to do so.^[8] British colonialism may have exported the parental rights regime to all corners of the Empire but post-1945, the Lockean conception of parental authority became the basis for making minors holders of rights that do not depend on their mother's marital status at the time of their conception and birth. The doctrine of child welfare advanced by Locke became the jurisprudential basis for the UN Convention on the Rights of a Child^[9](CRC). After common law jurisdictions ratified the CRC, their family law migrated from the parental rights regime to the parental

¹Tristram H, Engelhardt. *The Foundations of Bioethics*. (Oxford University Press,1996) 136: Daniel Callahan, 'Bioethics and Fatherhood.' [1992] 735 Utah L. Rev, 739-40.

²Barbara Hall. 'The origin of parental rights,' in Stephen Gilmore (ed.). *Parental Rights and Responsibilities*. (Routledge, 2017) 19-28

³ John Eekelaar. 'The end of an era?' [2003] 28 (1) Journal of Family History, 108-122.

⁴Wayne Morrison. *Blackstone's Commentaries on the Laws of England*. (Vol. 1. Routledge, 2013)434

⁵ Andrew J. Cherlin. 'American Marriage in the Early Twenty-First Century.' [2005] 15(2) Future of children, 33-55

⁶ Paul Laslett. *The World We Have Lost*. (Cambridge University Press,1965) 140-1

⁷ John Locke. *Second treatise of government and a letter concerning toleration*. (Oxford University Press,2016).

⁸Jonathan Herring. *Law Express: Family Law*. (Pearson Education Publishers, 2011)81-94

⁹ [1989] General Assembly Resolution 44/25

responsibility system espoused by Locke.^[10]For example, the United Kingdom (UK) ratified the CRC and enacted the Children's Act^[11](CA 1989) modelled on the parental responsibility regime. Hence in *Re B (A Child)*^[12]the presiding judge observed that post-1989, no one has the biological right to be a parent or raise a child.

Paternity fraud happens when a woman represents a man that they are the father of their child even though they know that this may not be true because she has a sexual relationship with other men.^[13]This article limits itself to paternity fraud between divorced spouses. There is an increasing clamour throughout the common law world for men to be offered a legal remedy after DNA testing disestablishes paternity for a child or children, they have been paying child support for as part of a divorce settlement. ^[14] Even though the CRC has redefined the legal conception of fatherhood, the law still expects a man to pay for the upbringing of a minor they have parental authority over through genetic linkages or adoption. For instance, the UK Family Law Reform Act^[15](FLA), Child Support Act^[16](CSA), along with the Adoption and Children's Act^[17](ACA), work together to create a legal obligation on men to only pay for the upbringing of their biological children.^[18]

A panoramic view of the arguments in favour of penalizing women for engaging in paternity fraud reveals two positions. The first is that it is a violation of men's reproductive rights in an arbitrarily way. Secondly, when a mother engages in it, they are violating their child's best interests. But the fact that misattributed paternity victimizes both men and minors, child welfare concerns complicate any inquiry into the question of whether the law should be used to address paternity fraud. The challenge for lawmakers in common law jurisdictions that

¹⁰ Jonathan Herring. 'The Welfare Principle and the Rights of Parent,' in Andrew Bainham, Shelley Day Sclater, and Martin Richards(eds). *What is a Parent: A Socio-Legal Analysis?* (Bloomsbury Publishing, 1999).24-47

¹¹ [1989]Chapter 51

¹² [2010] 1FCR 1

¹³ Melanie B Jacobs. 'When Daddy Doesn't Want to Be Daddy Anymore: An Argument Against Paternity Fraud Claims.' [2004] 16 Yale Journal of Law & Feminism, 193-196

¹⁴Leslie Cannold. 'Who's the father? Rethinking the moral 'crime' of paternity fraud.' [2008] 31(4) Women's Studies Int Forum, 249-256: Lyn, Turney, and Paula Wood. 'Paternity Fraud and the Invisible Child'[2007] 5(2) Australian Journal of Emerging Technologies & Society, 119-131: Paul Millar. *Non-paternity in Canada*. (University of Calgary Press, 2001): Marita Carnelley, and Shannon Hctor. 'Misattributed paternity-*Nel v Jonker* (WCHC) unreported case number A653/2009 dated 2001-02-17: cases'[2012] 33(1) *Obiter*, 163-178: Ronald K. Henry. 'The Innocent Third Party: Victims of Paternity Fraud' [2006]40(1) Family Law Quarterly, 51-79.

¹⁵ [1987] Chapter 42

¹⁶ [1991] Chapter 48

¹⁷ [2002] Chapter 15

¹⁸ David Henshaw. *Recovering Child Support: Routes to Responsibility*. Sir David Henshaw's report to the Secretary of State for Work and Pensions. [2006] <https://www.gov.uk/government/>

follow the parental responsibility model is to strike a balance between the reproductive rights of men with the best interests of a child.

II. Reproductive Health Rights & Paternity Fraud

The UK common law conception of marriage as a private economic relationship grounded in a civil contract meant under the parental rights regime, establishing the paternity of a child was a justiciable point of law governed by the rules governing the presumption of legitimacy.^[19] The presumption of legitimacy was developed to work in favour of children born during their mother's coverture to protect the institution of marriage.^[20] After 1989, the categorization of children as illegitimate started getting eradicated throughout the common law world because it is incompatible with the idea of minors as holders of human rights.

The United Nations Declaration of Human Rights^[21](UDHR) is the normative foundation for international human rights.^[22] The UDHR and two human rights treaties subsequently brought into force in 1966^[23] collectively form the International Bill of Human Rights (or the UDHR Model).^[24] At the centre of how the UDHR Model works are *inter alia* the idea that men, women and children have equal rights^[25]. Moreover, everyone has the right to an “effective legal remedy” when one of their human rights is violated.^[26]

The extension of parental responsibility to unmarried men has resulted in a body of scholarship advocating for women to be held accountable for victimizing men through paternity fraud because it is a violation of men’s reproductive health right to choose when to sire children.^[27] To some, for women to have unrestricted access to abortion as a reproductive health right, men must have the right to financial abortions to

¹⁹Andrew Bainham. Parentage, Parenthood and Parental Responsibility: Subtle, Elusive Yet Important Distinctions,’ in Andrew Bainham, et.al., (eds). *What is a Parent: A Socio-Legal Analysis*, (Hart Publishing, 1999) 24-47; John W., Ester. *Illegitimate Children and Conflict of Laws* [1961]. <http://www.repository.law.indiana.edu/ilj>

²⁰Solangel Maldonado. ‘Illegitimate Harm: Law, Stigma, and Discrimination Against Nonmarital Children.’ [2011] 63 Fla.LR, 345

²¹ [1948] General Assembly, Res 217 A(III)(UDHR).

²²John Donnelly. *Universal Human Rights in Theory and Practice*. (Cornell University Press, 2012) 24

²³International Covenant on Civil and Political Rights of [1966] 999 UNTS 171(hereafter ICCPR): International Covenant on Economic Social and Cultural Rights [1966] 993 UNTS 3(hereafter CESCR).

²⁴Robin Ramcharan, and Bertrand Ramcharan. ‘Crafting Universal Values: The UDHR Model, Context, and Process,’ in Robin Ramcharan, and Bertrand Ramcharan(eds.). *Asia and the Drafting of the Universal Declaration of Human Rights*, (Palgrave Macmillan, 2019). 23-38

²⁵Article I UDHR: Article 2 UDHR: Article 7 UDHR

²⁶ Article 8 UDHR

²⁷Adrienne D Gross. ‘A man’s right to choose: searching for remedies in the face of unplanned fatherhood’ [2006] 55 Drake L. Rev. 1015.

maintain logical consistency with the UDHR Model.^[28]Penalizing women who engage in paternity fraud is a logical extension of their pursuit for equal reproductive rights between the sexes. To others, laws have a 'pre-existing bias in favour of male-centred viewpoints,'^[29]and they are wielded by the state to govern the private lives of citizens, the law must not be used to sanction paternity fraud or dissolve a man's legal obligation to pay for the upbringing of a child even after DNA testing disestablishes paternity.^[30]

The framing of paternity fraud as a male reproductive health right issue is, in a sense, the wrong way to go about things. Sexual and Reproductive rights are not normatively expressed by the UDHR model, through a multilateral treaty.^[31] Neither is it a customary international law norm.

III. The Legal Conception of Fatherhood

The presumption of legitimacy operated in UK family law to determine the paternity of a minor because of the dichotomy between the legal obligations of putative fathers and the legal rights of their children.^[32]Through judicial decisions, rules were set on how to determine when the paternity of a child is established or disestablished.^[33]The UK courts also resolved that the standard of proof in a paternity suit should be on a balance of probability like in a civil suit.^[34]

A natural desire for conclusive evidence of paternity pushed UK Family law into accepting scientific testing as a judicial aid.^[35]Medical expert opinion was made admissible when it is relevant to determining the

²⁸Melanie G., McCulley. 'The male abortion: the putative father's right to terminate his interests in and obligations to the unborn child.' [1998] 7 JL & Pol'y, 1: Frances Goldscheider. 'Men Children and the Future of the Family in the Third Millennium.' [2006] 32(6) Futures, 525-538: Frances Goldscheider, Livia SzOláh, and Allan Puur. (eds.). 'Reconciling Studies on men's gender attitudes and fertility: Response to Westoff and Higgins.' [2010] 22(8) Demographic Research, 189-198.

²⁹Martha A., Fineman. 'Feminist legal theory' [2005] 13 Am. UJ Gender Soc. Pol'y & L, 13-14

³⁰Elizabeth Bartholet. 'Guiding Principles for Picking Parents.' [2004] 27 Harv. Women's LJ, 323.

³¹Lynn P., Freedman, and Stephen L. Isaacs. 'Human rights and reproductive choice.' [1993] *Studies in family planning*, 18-30.

³²Nicholas H., Nicolas. *A Treatise on the Law of Adulterine Bastardy, With a report of the Banbury case* (Pickering, 1836) 31

³³*Re: Foxcroft* [1282] 10 Edw. 7; 1 RoL Abr 359; *Re: Del Heith* [1306] 34 Edw I; *Re: Radwell's Case* [1290] 18 Edw I; *Re: Suel Case* [1359] 33 Edw III; *Done and Egerton v Hinton and Starkey* [1617] 14 Jaq I; *Re: Lady Roos* [1666] 18 Car II; *St George v St Margaret* [1706] 5 Anne; *Pendrell v Pendrell* [1732] 5 Geo II; *King v Luffe* [1807] 8 East 208

³⁴*Bater v Bater* [1950] 2 All ER [458] (*per* Denning LJ); *S v S*; *W v Off Solicitor* [1970] 3 All ER 107 [109]; Section 26, Family Law Reform Act [1969] Chapter 46

³⁵Jane C., Murphy. 'Legal Images of Fatherhood: Welfare Reform, Child Support Enforcement, & Fatherless Children.' [2005] 81 Notre Dame L. Rev, 325

length of gestation^{36]} by a mother or proof of a man's impotence.³⁷ Next, the science of blood testing became a feature of 20th Century family causes.³⁸ It was first used in *Wilson v Wilson*^[39] to determine the paternity of a child during divorce proceedings. Thereafter, UK courts first rejected the idea that a child or adult can be compelled to undergo a blood test⁴⁰ before in *Holmes v Holmes*,^[41] the position was reversed. In that case, it was determined that judges could compel parties to undergo blood tests to determine the paternity of a child. Thus, in *Re L (a Child)*,^[42] it was determined that a refusal to participate in blood testing by a party was an admission of a lack of paternity.

These rules were generated before CA 1989 and the CRC migrated UK family law to the parental responsibility system in which “no one has the biological right to be a parent or raise a child.”^[43] The courts have broad discretion to determine what is in the best interests of a child.^[44] A body of jurisprudence has been developed that shows that before a court makes a decision likely to impact the rights of a child, the welfare of the minor will be of paramount importance.^[45] This has a practical implication for the use of scientific testing when paternity is a fact in issue in a civil suit. On this point of law, the position seems unclear.

Post-1989, UK courts have determined that automatic parental responsibility may be acquired by both married and unmarried men the moment their biological child is born.^[46] In a decided case, it was held that because it is in the best interests of a child to know who their genetic parents are,^[47] but in a subsequent case, it

³⁶*Alsop v Bowtrel*[1619] 17 Jaq 1: *Bowden v Bowden* [1917]62 Sol Jo 105: *Gaskill v Gaskill* [1921] TLR 1: *Wood v Wood* [1947] All ER 95: *Hadlum v Hadlum*[1948] 2 All ER 412: *Clark v Clark*[1939]P 228

³⁷*Clarke v Clarke* [1943] 2All ER 540.

³⁸June Carbone & Naomi Cahn. ‘Which Ties Bind-Redefining the Parent-Child Relationship in an Age of Genetic Certainty.’ [2011] 11 Wm. & Mary Bill of Rights Journal, 1011.

³⁹[1942] LJ 129.

⁴⁰*B v AG*[1966]2All ER [145]: *Stocker v Stocker*[1966] 2 All ER 147: *W v W*[1964] P67: *H v H*[1966] 3 All ER 560(in the course of an appeal to vary or terminate a maintenance order, the court refused to compel a child to undergo blood testing because it wouldn't have been in the child's best interests to do so)

⁴¹[1966] 1All ER 356.

⁴²[1968] P119.

⁴³*Re B (A Child)* [2010] 1FCR 1.

⁴⁴ Section 1(3) CA 1989.

⁴⁵*Re : S (Contact: Children's Views)*[2002] 1 FLR [1156]: *Briley v Lynas*[1997] HL : *Re (Residence Order: Status Quo)*[1998] 1 FLR [368] [371]: *Re: S (a Child)(Residence Order: Condition)* [2001] 3 FCR 154: *Re: E (Residence: Imposition of Conditions)* [1997] 2 FLR 638: *Re: D (Imposition of Conditions)* [1996] 2 FLR 281: *Re: M (Child Upbringing)*[1996] 2 FLR 441:*Re : W (Residence Order)*[1998] 1 FCR 75: *Re: M (handicapped child: parental responsibility)* [2001] 2 FLR 342: *Re: H (A Minor)(Section 37 Direction)*[1993]2 FLR 541,[549]: *Re: G (Parental Responsibility: Education)* [1994] 2 FCR 1037:*Re: P (Education)* [1992] 1 FLR 316: *Re: J (Child's Religious Upbringing and Circumcision)* [2000] 1 FLR 571: *Re: C* [1996] 2 FLR 43: *Re: B (Change of surname)* [1996] 1 FLR 791.

⁴⁶*Re: S (Parental Responsibility)* [1995] 2 FLR 648.

⁴⁷*Re H and A* [2002] EWCA Civ.190

was held that a court may opt not to use DNA testing to determine paternity if it serves a minor's best interests.^[48] These conflicting positions may have been in an attempt to strike a balance between the interests of a non-biological father using that the tort of deceit to seek redress^[49] and the need to protect the best interests of a non-biological child.

IV. *P v B (Paternity Damages for deceit) [2001] Revisited*

As a general rule, an action for deceit lay at common law when a person "makes a fraudulent misrepresentation of fact with the intent to induce another to act upon the misrepresentation to their detriment."^[50] It can be traced back to an 18th Century English court decision where the defendant was found tortuously liable for fraudulently misrepresenting to the claimant that a third party was a person who wouldn't default on an obligation to pay for goods supplied on credit.^[51] In subsequent cases, the parameters of the tort of deceit became defined as (1) making a false representation about a fact, (2) knowingly, or without genuine belief in its accuracy, or recklessly, or not caring whether it is true or false, (3) with an intention that a representee will rely on it, and (4) the reliance causes actionable damage to the representee.^[52]

The misrepresentation of fact may be using speech or written text or both, but it can also be inferred from conduct calculated to mislead.^[53] The tort of deceit was further developed in *Bradford Third equitable benefits Building Society v Borders*,^[54] where it was held that if a person manifestly approves or adopts a misrepresentation made by a third party, if it turns out to be false, that person may be held to have committed the tort. In another decided case,^[55] it was determined that when a misrepresentation of fact has

⁴⁸ *J v C* [2007] EWCA Civ. 551

⁴⁹ Robert Bagshaw. 'Deceit within Couples' [2001] 117 LQR, 571-574; Darach McNamara. 'The Tort of Deceit and Family Law: Some Recent Developments.' [2001] 9 ISLR, 163

⁵⁰ John Murphy. *Street on Torts*. (12th edition, Oxford University Press, 2007) 330

⁵¹ *Pasley v Freeman* [1789] 3 Term Rep 51

⁵² *Derry v Peek* [1889] 14 App Cas [337] (*per* Lord Herschell); *Polhill v Walter* [1832] 3 B & Ad [114] (it is for the claimant to prove that a representation was made by defendant with an intention that claimant would be induced to act relying on that representation); *Downs v Chappell* [1996] 3 All ER (it is the claimant who must prove an intention to mislead and reliance on the representations of the defendant that subsequently caused claimant to alter their legal position to their detriment)

⁵³ *R v Bernard* [1837] 7 C & P, 784

⁵⁴ [1941] 2 All ER [211] (*per* Lord Maugham).

⁵⁵ *Smith v Chadwick* [1884] 9 App Cas [201] (*per* Lord Blackburn); *Gross v Lewis* [1970] Ch 445

both true or false elements if the defendant knows about the falsity in their representations, the representor has committed the tort of deceit.

In *Schneider v Health* [56], it was determined that "active concealment of the truth" occurs where a representee is prevented from accessing information is enough to sustain an action for the tort of deceit even in the absence of a positive misstatement about facts by the representor because the tort is premised on knowledge by the representor that their representation is false or likely to be false.[57] Thus, an incomplete statement is misleading for action for deceit.[58] Furthermore, when a representor knows that factors beyond their control of has made their representation false but makes they make no effort to inform the representee about this change, the representor commits the tort of deceit when the representee goes on to suffer damage.[59]

In *Nocton v Lord Ashburton*[60], the presiding judge observed that the tort of deceit may be a creature of commercial law, but its scope can be expanded into other areas of private law. In *P v B (Paternity Damages for deceit)*,[61] the facts were that a man was awarded damages because his partner had committed the tort of deceit against him when she wilfully misled him to believe, over many years, that he was the biological father of her child on the basis that he had suffered the economic loss of raising another man's child and emotional distress after DNA disestablished paternity. The presiding judge in their *obiter dictum* then excluded the application of the tort of deceit to divorced couples. They reasoned that if it was used to end an ex-husband's obligations created by a child maintenance order would violate *res judicata*.

In the subsequent *A v B (Damages for Paternity)* [62] case, it was determined that paternity fraud happens when (1) a mother represents to a man that he is the father of her child, (2) knowing that she may be wrong because she more than one sexual partner, (3) to induce the representee to assume parental responsibility for her child. The court then went on to say that for paternity fraud to be the basis of actionable deceit, a claimant must prove they not only relied on a woman's misrepresentations about her child's paternity but that they did so to their detriment. For the next fourteen years after *P v B (Paternity Damages for deceit)*

⁵⁶ [1813] 3 Camp [506]

⁵⁷ *Briess v Woolley* [1954] AC ,333.

⁵⁸ *Peek v Gurney* [1873]LR 6 (HL) 377[403]: *Banque Financiere de la Cite v Westage Insurance* [1990] 2 All ER, 947.

⁵⁹ *Inclendon v Watson* [1862] 2 F& F 841.

⁶⁰ [1914] AC 932, [950][951][952][953][954][955].

⁶¹ [2001] 1 FLR 1041, [1047][1048](*per* Burnton J).

⁶² [2007] 2 FLR 1051,[43](*per* Blofeld J).

was decided, the operation of *res judicata* prevented the extension of the tort of deceit to address paternity fraud between divorced spouses.

Public policy is a judicial tool that is sometimes invoked when a court opts out of determining a case on its merits because an outcome of such a determination would, in the court's opinion, offend public opinion,^[63]not be politically expedient^[64]or result in some illegal^[65]or immoral outcome.^[66] Subject to a few exceptions, the public policy of *res judicata* operates to make final judgements in one case a barrier to further litigation between the same parties through a subsequent case.^[67] The concept of *res judicata* is a common feature of civil litigation throughout the common law world.^[68]

Things changed when paradoxically, public policy was invoked to expand the use of the tort of deceit to address paternity fraud between divorced spouses.^[69] It is a general policy of the UK common law system not to allow a wrongdoer to profit from their wrongdoing.^[70]Therefore in the *X v Y* case, the presiding judge used this general public policy to justify why *res judicata* is not a barrier to an ex-husband suing their former spouse for damages because their ex-wife had victimized them through paternity fraud.

V. Conclusions

Paternity fraud happens when a woman makes representations to a man that they are the biological father of her children while knowing that this may not be true because they have undisclosed sexual relationships with other men. The man then acts on her representations to assumes parental responsibility for

⁶³ See Albert Venn Dicey. *Lectures on the Relation between Law and Public Opinion in England during the 19th Century* (MacMillan & Co, 1905).

⁶⁴*Egerton v Lord Brownlow* [1853]10 ER 359.

⁶⁵*Patel v Mirza* [2014] EWCA Civ. 1047, [47]; *Allen v Rescouis* [1677] 2Lev 174; *Clay v Yates* [1856] 1H&N 73.

⁶⁶*Evans v Evans* [1790]161 ER 466; *The North Division of the County of Louth* [1911] 6 O'M & H 103;*Glyn v Weston Feature Film Co* [1916] 1 Ch 261;*Shaw v Director of Public Prosecutions* [1961]2 All ER 446; *Uphill v Wright* [1911] 1 KB 506;*Girardy v Richardson* [1783] 1 Esp. 13; *Pearce v Brooks* [1866] LR 1 Ex 213;*Fitzpatrick v Batger & Co Ltd*, [1967] 2 All ER 657, [658 E] (*per* Lord Justice Denning MR).

⁶⁷ *Marginson v Balckburn* [1939] 2 KB 726.

⁶⁸*Allen v. McCurry* [1980] 449 U.S. 90, [95][96](United States); *ET v Attorney-General* [2013] eKLR (Kenya); *Penner v. Niagara (Regional Police Services Board)*, [2013] S.C.J. No. 19 [88] [89][91][114] (Canada); *Re: The Marriage of Caddy and Miller* (1986) 84 FLR 169(Australia).

⁶⁹*X v Y* [2015] EW Misc. B10 (cc) [46-60].(*per* Taylor J).

⁷⁰*Holman v Johnson* [1775]98 ER 1120, [1121](*per* Lord Justice Mansfield); *Montefiori v Montefiori*[1762] 1Wm BI 364 : *Collins v Elantern*[1767]95 Eng. Rep. 847,[852](*per* Lord Justice Wilmot); *Kirkham v Chief Constable of the Greater Manchester Police* [1990] 2 QB 283.

another man's child. The woman's misrepresentations about the paternity of a child are then subsequently discovered through DNA testing.

Throughout the common law world, jurisdictions that gave ratified the CRC have migrated away from the parental rights regime to the parental responsibility system that conceptualizes fatherhood as an obligation to pay for the upbringing of a biological child or children a man intentionally accepts to have parental authority over through the process of adoption. The legal conception of fatherhood has led to an increasing number of voices demanding that men have a legal remedy whenever they are victimized by paternity fraud.

The reproductive right argument in favour for the law to give men a remedy when they are victimized by paternity fraud is faulty because reproductive health rights have not been normatively expressed in a multilateral treaty (or in customary international law for that matter). The tort of deceit offers the most viable avenue for men to get a remedy because as a general policy, UK common law does not allow a wrongdoer escape sanction after their wrongdoing is discovered. Consequently, the tort of deceit can be used to address paternity fraud between married and divorced spouses. The tort accurately captures the conduct of the woman who misrepresents who the father of her child is. Furthermore, it is in the best interests of a child to know who their biological father is.

References

- [1].Adrienne D., Gross. 'A man's right to choose: searching for remedies in the face of unplanned fatherhood'[2006] 55 Drake L. Rev. 1015.
- [2].Albert Venn Dicey. *Lectures on the Relation between Law and Public Opinion in England during the 19th Century* (MacMillan & Co, 1905).
- [3].Andrew Bainham. Parentage, Parenthood and Parental Responsibility: Subtle, Elusive Yet Important Distinctions,' in Andrew Bainham, et.al., (eds). *What is a Parent: A Socio-Legal Analysis*, (Hart Publishing,1999)
- [4].Andrew J. Cherlin. 'American Marriage in the Early Twenty-First Century.' [2005] 15(2) Future of children, 33-55

- [5].Barbara Hall. 'The origin of parental rights,' in Stephen Gilmore (ed.). *Parental Rights and Responsibilities*. (Routledge, 2017)
- [6].C., Murphy. 'Legal Images of Fatherhood: Welfare Reform, Child Support Enforcement, & Fatherless Children.' [2005] 81 Notre Dame L. Rev, 325
- [7]. Daniel Callahan, 'Bioethics and Fatherhood.' [1992] 735 Utah L. Rev, 739-40.
- [8].Darach McNamara. 'The Tort of Deceit and Family Law: Some Recent Developments.' [2001] 9 ISLR, 163
- [9]. David Henshaw. *Recovering Child Support: Routes to Responsibility. Sir David Henshaw's report to the Secretary of State for Work and Pensions*. [2006] <https://www.gov.uk/government/>
- [10].Elizabeth Bartholet. 'Guiding Principles for Picking Parents.' [2004] 27 Harv. Women's LJ, 323.
- [11].Frances Goldscheider, Livia SzOláh, and Allan Puur. (eds.). 'Reconciling Studies on men's gender attitudes and fertility: Response to Westoff and Higgins.' [2010] 22(8) Demographic Research, 189-198.
- [12]. Frances Goldscheider. 'Men Children and the Future of the Family in the Third Millennium.' [2006] 32(6) Futures, 525-538
- [13].JohnEekelaar. 'The end of an era?'' [2003] 28 (1) Journal of Family History, 108-122.
- [14].John Locke. *Second treatise of government and a letter concerning toleration*. (Oxford University Press, 2016)
- [15].John Murphy. *Street on Torts*. (12th edition, Oxford University Press, 2007)
- [16].John W. Ester. *Illegitimate Children and Conflict of Laws* [1961] <http://www.repository.law.indiana.edu/ilj>
- [17].Jonathan Herring. 'The Welfare Principle and the Rights of Parent,' in Andrew Bainham, Shelley Day Sclater, and Martin Richards(eds). *What is a Parent: A Socio-Legal Analysis?* (Bloomsbury Publishing, 1999)
- [18].Jonathan Herring. *Law Express: Family Law*. (Pearson Education Publishers, 2011)
- [19].June Carbone & Naomi Cahn. 'Which Ties Bind-Redefining the Parent-Child Relationship in an Age of Genetic Certainty.' [2011] 11 Wm. & Mary Bill of Rights Journal, 1011
- [20].Leslie Cannold. 'Who's the father? Rethinking the moral 'crime' of paternity fraud.' [2008] 31(4) Women's Studies Int Forum, 249-256
- [21].Lyn, Turney, and Paula Wood. 'Paternity Fraud and the Invisible Child' [2007] 5(2) Australian Journal of Emerging Technologies & Society, 119-131

- [22].Lynn P., Freedman, and Stephen L. Isaacs. 'Human rights and reproductive choice.'[1993] *Studies in family planning*, 18-30.
- [23].Marita Carnelley, and Shannon Hocter. 'Misattributed paternity-*Nel v Jonker* (WCHC) unreported case number A653/2009 dated 2001-02-17: cases'[2012] 33(1) *Obiter*, 163-178
- [24].Martha A., Fineman. 'Feminist legal theory'[2005]13 *Am. UJ Gender Soc. Policy & L*, 13-14
- [25].Melanie B Jacobs. 'When Daddy Doesn't Want to Be Daddy Anymore: An Argument Against Paternity Fraud Claims.' [2004] 16 *Yale Journal of Law & Feminism*, 193-196
- [26].Melanie G., McCulley. 'The male abortion: the putative father's right to terminate his interests in and obligations to the unborn child.'[1998]7 *JL & Policy*, 1.
- [27].Nicholas H., Nicolas. *A Treatise on the Law of Adulterine Bastardy, With a report of the Banbury case* (Pickering,1836)
- [28].Paul Laslett. *The World We Have Lost*. (Cambridge University Press,1965)
- [29].Paul Millar. *Non-paternity in Canada*. (University of Calgary Press, 2001)
- [30]. Robert Bagshaw. 'Deceit within Couples'[2001] 117 *LQR*, 571-574
- [31].Robin Ramcharan, and Bertrand Ramcharan. 'Crafting Universal Values: The UDHR Model, Context, and Process,' in Robin Ramcharan, and Bertrand Ramcharan(eds.). *Asia and the Drafting of the Universal Declaration of Human Rights*, (Palgrave Macmillan, 2019)
- [32].Ronald K. Henry. 'The Innocent Third Party: Victims of Paternity Fraud' [2006]40(1) *Family Law Quarterly*, 51-79
- [33].Solange Maldonado. 'Illegitimate Harm: Law, Stigma, and Discrimination Against Nonmarital Children.' [2011] 63 *Fla.LR*, 345
- [34].Tristram H., Engelhardt.*The Foundations of Bioethics*. (Oxford University Press,1996)
- [35].Wayne Morrison. *Blackstone's Commentaries on the Laws of England*. (Vol. 1. Routledge, 2013)