

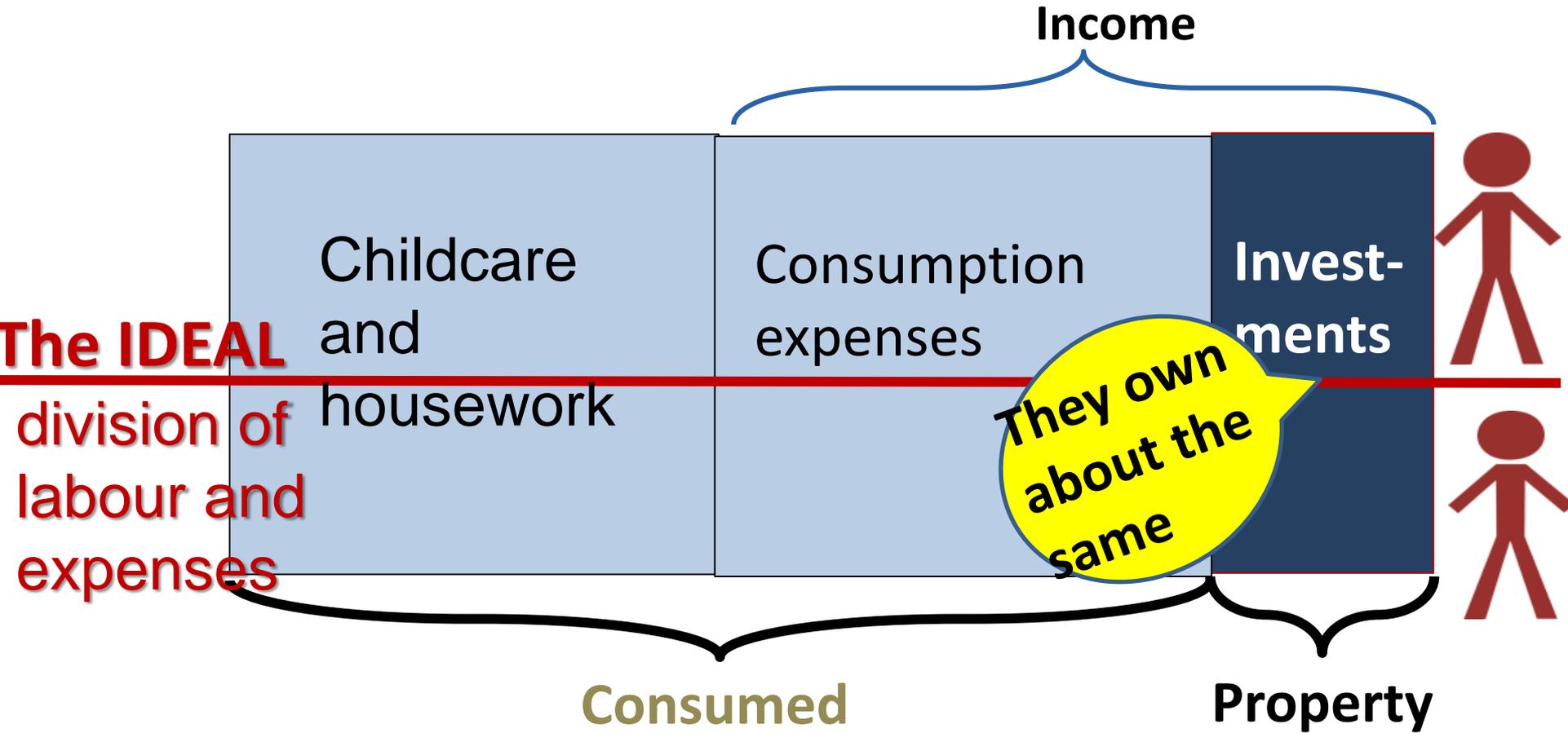
VALORIZATION OF HOUSEHOLD LABOUR THROUGH PROPERTY LAW IN NORWAY

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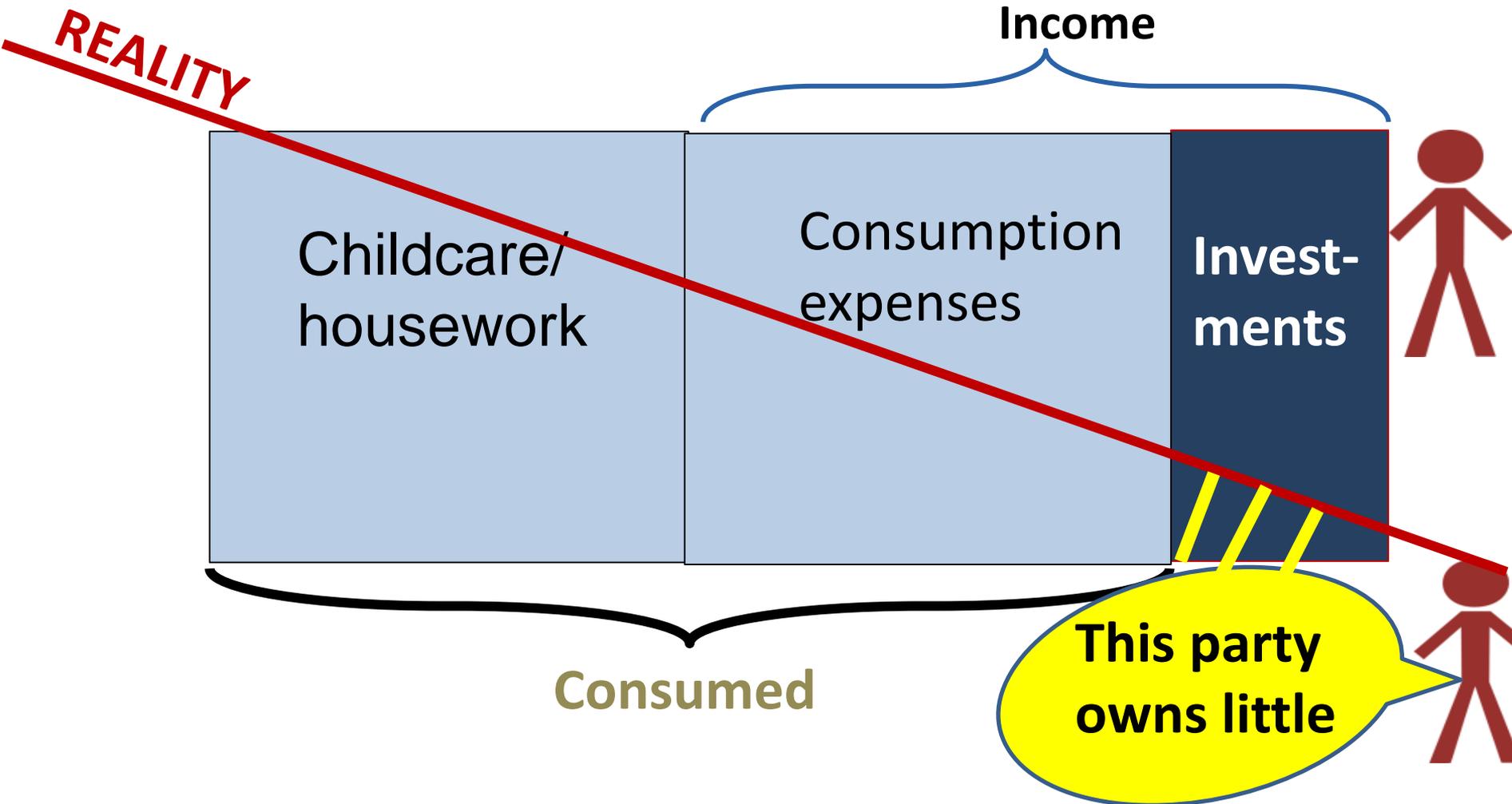
The problem:

The two parties' work efforts may be equal at any given moment, yet inequality is generated over time because the work performance of one is **consumed** while that of the other is (partly) **invested**.

Work efforts and ownership in marriage/cohabitation



Work efforts and ownership in marriage/cohabitation



In Civil-law countries:

A discretionary regime (compensation) may correct mistakes in a few individual cases, but is not suited to correct the overall “system error” stemming from this unequal division of labour and expenditure.

Norwegian Supreme Court Reports 1975 p. 220

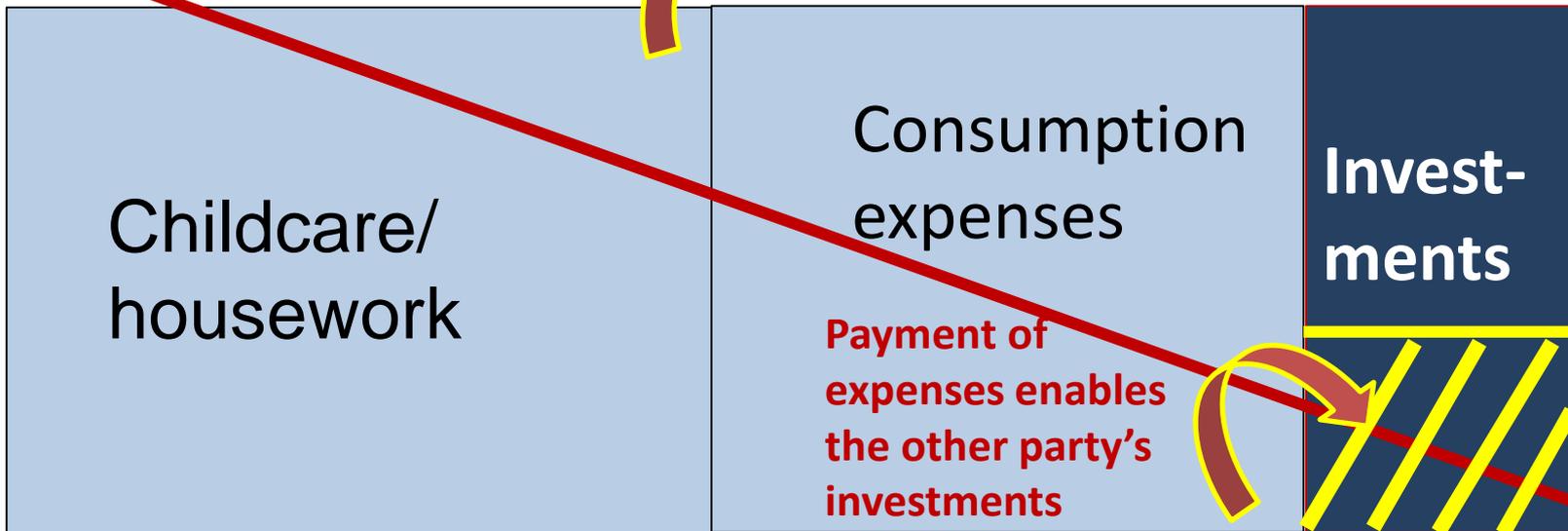
The Court ruled that a wife who stayed at home and minded small children **co-owned the house purchased by her husband** with his income.

The judge stated that it was the wife's housework and her caring for three small children **“that has enabled the husband to devote so much work to building”** of the house.

Norway and Iceland: Indirect contributions may lead to co-ownership

Childcare etc. enables the other party's income

Income



Consumed

They own about the same

Codified in the Marriage Act 1991

Section 31, third paragraph:

“In assessing who has acquired items of property that have been used by the spouses in common and personally, such as a common residence or ordinary household goods, due consideration shall be given to the work of a spouse in the home.”

NOU (Official Norwegian Report) 1987: 30 p. 70-71:

The homemaker's co-ownership is based on "economic realities"

- no transfer of value occurs by declaring that the homemaker is a co-owner.."

The same principle applies in unmarried cohabitation: Norwegian Supreme Court Reports 1979 p. 1352 and 1984 p. 487.

The idea seems to be that in relationships with small children, the breadwinner would have to reduce his working hours by one half, and consequently halve his income, if he were to take equal responsibility, as the children need round-the-clock care.

If the children are older the homemaker will normally enable less than half his earnings.

In Norway, the lifelong full-time housewife is a thing of the past.

However, about 40 percent of women are working part-time and in these cases the women will normally contribute to property acquisitions directly, as well as indirectly by covering consumption expenses.

Thus, in the majority of relationships, the parties would be regarded as equal contributors to surplus accumulated during the relationship.

**Law Commission for England and Wales 2007, para 4.48
(emphasis added):**

“The applicant [caregiver] might, for example, contend that, **by looking after the family, he or she had enabled the respondent to build up savings** or to advance a career. However, such a contention would be very difficult to uphold because of the need to establish causation. **The applicant would have to prove what the respondent [breadwinner] would have achieved had the applicant not made his or her contribution.** This would be **extremely difficult** as there are so many variables: for example, the respondent could argue that he or she would have been able to deal with household tasks by **engaging professional domestic help.**”

AMERICAN LAW INSTITUTE, *Principles of the Law of Family Dissolution* (2002) § 4.09 cmt. c, at 735.

“Much of the spousal earnings during marriage are consumed, and only the surplus remaining is available for division at divorce. For domestic labors to contribute to that surplus, they must not only enhance the financial capacity of the other spouse or the value of marital property but do so by an amount that exceeds the consumption attributable to the spouse performing those labors. **For domestic labors to contribute equally to that surplus would require, further, that this excess enhancement equal the excess of the higher-earning spouse’s income over that spouse’s consumption. Neither data nor intuition support such inferences.**”

What is the difference?

- **Law Commission/American Law Institute:**
The care of parents and others is fully substitutable: Market value
- **Norwegian Supreme Court:** The fact that the children are taken care of by the parents, is a constant factor in the causal reasoning.

Question:

Is the purpose of this legal reasoning to find out what would most probably have happened in the alternative instance – without any premises?

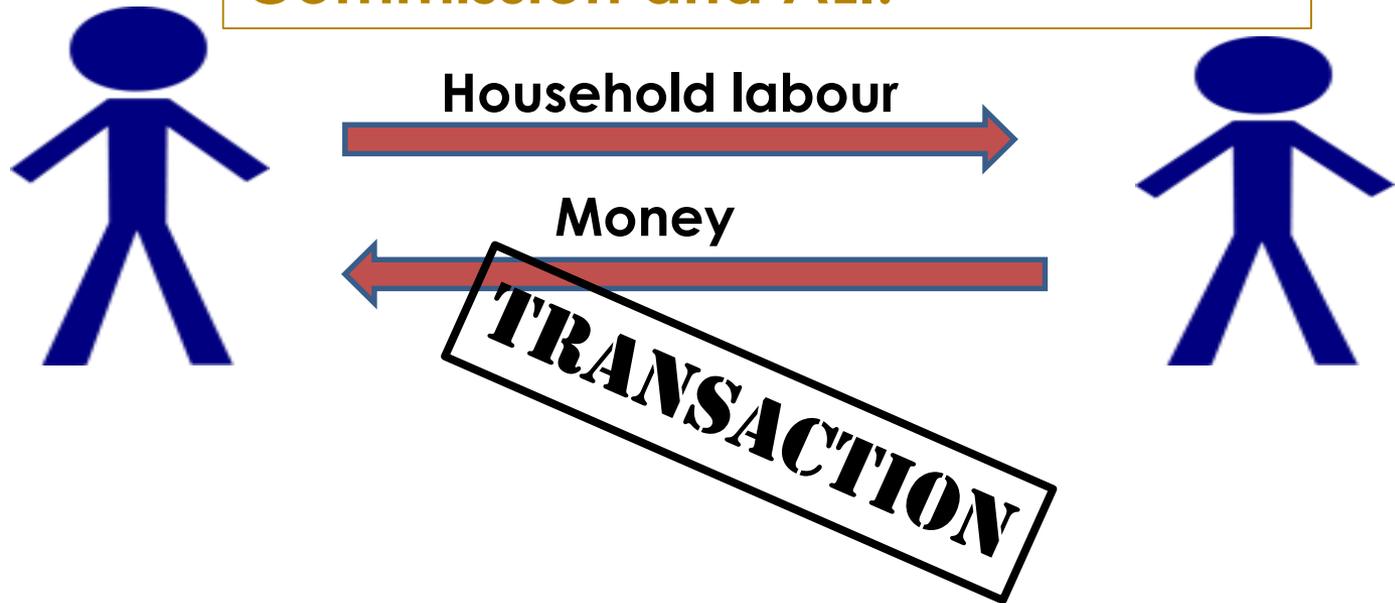
The key difference between the legal reasonings:

The Law Commission and ALI ignores the fact that the parties are in a **shared, committed living relationship where they constitute a work unit and have agreed upon (have a mutual understanding of) the division of labour.**



In this situation it could be argued that the fact that the children are taken care of by the parents should be a constant factor in the causal reasoning.

PATTERN OF THOUGHT - The Law Commission and ALL:



PATTERN OF THOUGHT – The Norwegian Supreme Court



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Spouses and cohabitants constitute a **consumption unit** and an **investment unit** as well as a work unit

Some of my statements about reality in need of empirical evidence (underlined) :

Consumption unit

The one with the higher income will pull the total consumption expenses upward, and due to the fact that they are “locked” into consuming more or less the same (food, housing, children etc), it seems unfair that **half** of the family’s expenditure are to be debited against the party who has the lower income.

Investment unit

A favourable economic position of one spouse/cohabitant at the beginning of the relationship is an impediment to accumulation of capital during the relationship: If one of the spouses brings a paid-off house into the marriage, it would probably seem natural for the couple to apply most of their disposable income to current expenses. The spouse (or cohabitant) without property will benefit from “free housing” during the relationship, but will be hard hit when nothing is saved for equal division upon termination.