

Comment,  
“BUT I CAN’T MARRY YOU”: WHO IS  
ENTITLED TO THE ENGAGEMENT  
RING WHEN THE CONDITIONAL  
PERFORMANCE FALLS SHORT  
OF THE ALTAR?

## I. Introduction

The engagement period is often a time of euphoria and bliss as two individuals build a relationship and contemplate one of the most important institutions in human society—marriage. Yet, sometimes as couples choose to “embark on the sea of matrimony,”<sup>1</sup> circumstances change, the bliss and euphoria of love ends, the relationship degenerates, and ultimately the engagement is canceled without a marriage taking place. Such circumstances often anger or devastate at least one of the parties who then hurls painful allegations of fault at the other. The ownership of gifts given to the other party during the engagement period is often an issue.<sup>2</sup>

This Comment will focus on the traditional gift given during the engagement period—the engagement ring. The donor gives the engagement ring to his fiancée as a sacred designation of conjugality. It is a symbol or pledge of betrothal growing out of love and affection, and thus signifies that the one who wears it is engaged to marry the man who gave it to her. Therefore, the engagement ring is often referred to as a gift “given in contemplation of the marriage and is a unique type of conditional gift.”<sup>3</sup> Even though the courts use the predominant theory of conditional gifts<sup>4</sup> when ordering recovery of the engagement

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<sup>1</sup> Pavlicic v. Vogtsberger, 136 A.2d 127, 130 (Pa. 1957).

<sup>2</sup> “Engagement” is the term used in this Comment to refer to the status or relationship of a couple during the period between their exchange of mutual promises to marry and the celebration of their marriage. See Elaine Marie Tomko, Annotation, *Rights in Respect of Engagement and Courtship Presents When Marriage Does Not Ensnare*, 44 A.L.R.5th 1 (1996).

<sup>3</sup> McIntire v. Raukhorst, 585 N.E.2d 456, 457 (Ohio Ct. App. 1989). See generally 38 AM. JUR. 2D *Gifts* §§ 1-108 (2001).

<sup>4</sup> For a general discussion of conditional gifts, See 38 AM. JUR. 2D *Gifts* §§ 80-90 (2001).

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ring, the question still remains: who is entitled to the ring when the conditional performance is not met?

Many courts reason that the engagement ring is an implied condition upon the subsequent marriage of the parties; when the marriage fails to ensue, the condition has not been met, and the donor is entitled to recover the engagement ring.<sup>5</sup> To the contrary, other courts refuse to imply a condition of marriage to the engagement ring just because it was given during the engagement period and will not order recovery of the ring unless it was expressly conditioned upon a marriage which did not take place.<sup>6</sup>

In addition, courts also consider how the parties terminated the engagement. Generally, when parties terminate the engagement by mutual agreement between the parties, the donor is entitled to recover the engagement ring.<sup>7</sup> However, situations occur where the parties do not mutually agree to terminate the engagement, and one party breaks the engagement. Determining the right to the engagement ring, given in contemplation of marriage, turns on whether a jurisdiction follows a “fault” or “no-fault” procedure. The fault-based approach requires the trier-of-fact to determine which party caused the termination, while a no-fault approach simply determines if the ring was given in contemplation of marriage without regard to blame of a party for the demise of the relationship.<sup>8</sup>

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<sup>5</sup> *Fierro v. Hoel*, 465 N.W.2d 669 (Iowa Ct. App. 1990); *De Cicco v. Barker*, 159 N.E.2d 534 (Mass. 1959); *Meyer v. Mitnick*, 625 N.W.2d 136 (Mich. Ct. App. 2001); *Gikas v. Nicholis*, 71 A.2d 785 (N.H. 1950); *Vigil v. Haber*, 888 P.2d 455 (N.M. 1994); *McIntire v. Raukhorst*, 585 N.E.2d 456 (Ohio Ct. App. 1989); *Lindh v. Surman*, 742 A.2d 643 (Pa. 1999); *Chester v. Ferri*, 26 Phila. Co. Rptr. 394 (Pa. D. & C.4th 1993); *Ruehling v. Hornung*, 98 Pa. Super. 535 (Pa. Super. Ct. 1930); *Brown v. Thomas*, 379 N.W.2d 868 (Wis. Ct. App. 1985). *See Tomko, supra* note 3, at 1.

<sup>6</sup> *Linton v. Hasty*, 519 N.E.2d 161 (Ind. Ct. App. 1988); *Coconis v. Christakis*, 70 Ohio Misc. 29 (Ohio. Co. 1981); *See Tomko, supra* note 3.

<sup>7</sup> *Vann v. Vehrs*, 633 N.E.2d 102 (Ill. App. Ct. 1994); *Fierro*, 465 N.W.2d 669; *Schultz v. Duitz*, 69 S.W.2d 27 (Ky. 1934); *McIntire*, 585 N.E.2d 456; *Coconis*, 70 Ohio Misc. 29; *Ruehling*, 98 Pa. Super. 535; *See Tomko, supra* note 3, at 1.

<sup>8</sup> *Lindh v. Surman*, 742 A.2d 643 (Pa. 1999). The “no-fault approach involves no investigation into the motives or reasons for the termination of the engagement and requires the return of the engagement ring simply upon nonoccurrence of the marriage.” *Id.* at 645.

## II. Recovery of the Engagement Ring

### A. Conditional Gifts

The engagement ring is the symbol of a couple's mutual promises to marry each other. "It is unlike any other gift given or exchanged by lovers."<sup>9</sup> No court has ever articulated the conditional gift principle as well as the court in *Pavlicic v. Vogtsberger*.<sup>10</sup>

[A] gift given by a man to a woman on condition that she embark on the sea of matrimony with him is no different from a gift based on the condition that the donee sail on any other sea. If, after receiving the provisional gift, the donee refuses to leave the harbor,—if the anchor of contractual performance sticks in the sand of irresolution and procrastination—the gift must be restored to the donor. *A fortiori* would this be true when the donee not only refuses to sail with the donor, but, on the contrary, walks up the gangplank of another ship arm in arm with the donor's rival.<sup>11</sup>

A majority of jurisdictions hold that where an engagement gift is given to a donee in contemplation of marriage, although absolute in form, it is conditional; the donor is entitled to return of the engagement gift upon breach of the engagement.<sup>12</sup> Recog-

<sup>9</sup> *Heiman v. Parrish*, 942 P.2d 631, 634 (Kan. 1997). "Unless some contrary intent has been expressed, an engagement ring is, by its very nature, a conditional gift given in contemplation of marriage" *id.* at 632.

<sup>10</sup> *Pavlicic v. Vogtsberger*, 136 A.2d 127 (Pa. 1957). The plaintiff provided the defendant, his fiancée, with numerous gifts including money to purchase the engagement ring. The court held that the gifts were given on condition that a marriage ensues. *See also Harris v. Davis*, 487 N.E.2d 1204 (Ill. App. Ct. 1986). "The law in Illinois appears established that a gift given in contemplation of marriage is deemed to be conditional on the subsequent marriage of the parties, and the party who fails to perform on the condition of the gift has no right to property acquired under such pretenses." In that case, the donor had given an engagement ring to the donee in contemplation of marriage. The donee broke the engagement. There was no allegation of donor's "fault" as a cause in the break-up by the donee. Thus, the donee failed to perform on the condition of the gift; therefore, she had no right to retain the ring or to dispose of it. *Id.* at 1206

<sup>11</sup> *Pavlicic*, 136 A.2d at 130.

<sup>12</sup> *Fierro*, 465 N.W.2d 669; *Heiman*, 942 P.2d 631; *Meyer v. Mitnick*, 625 N.W.2d 136 (Mich. Ct. App. 2001); *Aronow v. Silver*, 538 A.2d 851 (N.J. Super. Ct. Ch. Div. 1987); *Vigil v. Haber*, 888 P.2d 455 (N.M. 1994); *Gaden v. Gaden*, 272 N.E.2d 471 (N.Y. 1971); *Gagliardo v. Clemente*, 580 N.Y.S.2d 278 (N.Y. App. Div. 1992), leave to appeal dismissed by 584 N.Y.S.2d 499 (N.Y. 1992); *Becker v. Mix*, 718 N.Y.S.2d 498 (N.Y. App. Div. 2001); *Leshowitz v. Conklin*,

nizing the unique social identity that engagement rings occupy in our culture, most courts apply the law of conditional gifts. A party meets the burden of establishing the conditional nature of the gift by proving that the gift was “given in contemplation of marriage, the marriage itself is a condition precedent to the ultimate ownership of the ring.”<sup>13</sup>

### 1. *Implied Condition*

While states have been uniform in holding that an engagement ring is a gift conditioned upon marriage, a split in authority exists as to whether the condition of marriage may arise by implication or is expressly conditional upon fulfillment of the donee’s promise to marry the donor. A majority of jurisdictions recognize that the condition of ensuing marriage may be implied by the nature and inherent symbolism of the engagement ring, and upon failure of the condition, the donor is entitled to recover the engagement ring.<sup>14</sup> In other words, “the marriage must occur in order to vest title in the donee; mere acceptance of the marriage proposal is not the implied condition for the gift.”<sup>15</sup>

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665 N.Y.S.2d 593 (N.Y. App. Div. 1997); *Brown v. Learman*, 2000 Ohio App. LEXIS 5071 (Ohio Ct. App. 2000); *McIntire v. Raukhorst*, 585 N.E.2d 456 (Ohio Ct. App. 1989); *Lyle v. Durham*, 473 N.E.2d 1216 (Ohio Ct. App. 1984); *Lindh v. Surman*, 742 A.2d 643 (Pa. 1999); *Brown v. Thomas*, 379 N.W.2d 868 (Wis. Ct. App. 1985). See *Tomko*, *supra* note 3 at § 2.

<sup>13</sup> *Heiman*, 942 P.2d at 632. See *Fierro*, 465 N.W.2d 669.

<sup>14</sup> See *Tomko*, *supra* note 3, at 1. See also *Meyer*, 625 N.W.2d 136.

<sup>15</sup> *Lindh*, 742 A.2d at 645. The donee argued that “Pennsylvania law does not permit the donor to recover the ring where the donor terminates the engagement. *Id.* The Supreme Court agreed her argument had some basis in a few Pennsylvania decisions. In *Ruehling v. Hornung*, 98 Pa. Super. 535 (Pa. Super. Ct. 1930), the court implies that donee’s position is correct: “We think that if [the engagement ring] is always given subject to the implied condition that if the marriage does not take place either because of the death, or a disability recognized by the law on the part of, either party, or by breach of the contract by the donee, or its dissolution by mutual consent, the gift shall be returned.” *Id.* However, the court is silent on situations where the engagement ring must be returned when the donor breaks the engagement. While 7 SUMM. PA. JUR. 2D *Property* § 15:4, states “upon breach of the marriage engagement by the donee, the property may be recovered by the donor”; 17 PA. LAW ENCYCLOPEDIA, *Gifts* § 9, 118 (citing a 1953 common pleas court decision, “if on the other hand, the donor wrongfully terminates the engagement, he is not entitled to return of the ring.” Yet, the Supreme Court had not answered the question of whether the donor is entitled to return of the ring where the donor admit-

In *Fierro v. Hoel*,<sup>16</sup> the court held that “there is no need to establish an express condition that marriage will ensue. A party meets the burden of establishing the conditional nature of the gift by proving by a preponderance of the evidence that the gift was given in contemplation of marriage.”<sup>17</sup> Further, the court reasoned that requiring a donor of an engagement ring to state his or her intentions of the gift “in the alternative” would be unduly harsh and unnecessary.<sup>18</sup>

Most recently a Michigan court continued to recognize the unique niche that engagement rings hold in our society and explained:

[A] gift, however, may be conditioned on the performance of some act by the donee, and if the condition is not fulfilled the donor may recover the gift. . . . We find the conditional gift theory particularly appropriate when the contested property is an engagement ring. The inherent symbolism of this gift. . . forecloses the need to establish an express condition that marriage will ensue. Rather, the condition may be implied in fact or imposed by law in order to prevent unjust enrichment.<sup>19</sup>

The majority approach holds that the “engagement ring is a symbol or pledge of a future marriage; it signifies that the one who wears it is engaged to the man who gave it to her.”<sup>20</sup> Therefore, it is subject to an implied condition of marriage. Ultimately, since the engagement ring is given in contemplation of the mar-

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tedly ended the engagement. *See also* *Chester v. Ferri*, 26 Phila. Co. Rptr. 394 (Pa. D. & C.4th 1993).

<sup>16</sup> *Fierro*, 465 N.W. 2d 669.

<sup>17</sup> *Id.* at 671; *Heiman*, 942 P.2d 635 (quoting *Fierro*, 465 N.W.2d at 671); *See also Lindh*, 742 A.2d at 645; *See Gikas v. Nicholis*, 71 A.2d 785 (N.H. 1950); *Fanning v. Iversen*, 535 N.W.2d 770, 774 (S.D. 1995) (stating the rule that gifts made in contemplation of marriage are subject to an implied condition that they are to be returned if the donee breaks the engagement, applies to real estate as well as personality; finding that “[t]he implication that the arrangement was conditioned upon marriage is inescapable.”); *See also Brown v. Thomas*, 379 N.W.2d 868, 872 (Wis. Ct. App. 1985); *Lumsden v. Arbaugh*, 227 S.W. 868 (Mo Ct. App. 1921) (holding that a man who had given a piano to his fiancée in contemplation of marriage was entitled to recover the piano because it was an implied conditional gift to be returned if the donee broke the engagement).

<sup>18</sup> *Fierro*, 465 N.W.2d at 671.

<sup>19</sup> *Meyer*, 625 N.W.2d at 701-02 (quoting *Brown*, 379 N.W.2d at 872).

<sup>20</sup> *Lyle v. Durham*, 473 N.E.2d 1216 (Ohio Ct. App. 1984).

riage, the title to the ring does not vest unless the marriage takes place.

## 2. *Express Condition*

Conversely, a minority of jurisdictions refused to imply a condition of ensuing marriage to certain engagement gifts, but instead required that donors seeking recovery of engagement gifts show that the engagement gift was expressly conditional upon the marriage taking place.<sup>21</sup> For these courts such a determination goes hand-in-hand with a fault analysis of the break-up.<sup>22</sup> The effect of this approach requires the donor to evidence either an express agreement with the donee or the fault of the donee in the break up to recover the gifts given in contemplation of marriage.

Jurisdictions following the express condition approach allow the circumstances surrounding the conveyance to express the necessary condition.<sup>23</sup> For example, in *Linton v. Hasty*,<sup>24</sup> the court implied that a condition may be determined by the conduct of the parties rather than by an express agreement.<sup>25</sup> Similarly, in *Coconis v. Christakis*,<sup>26</sup> the court ruled “it was not unduly harsh to require that such a reservation be express and clearly understood by the donee at the time of delivery of the gift.”<sup>27</sup> Ultimately, for recovery of conditional gifts under an express conditional approach, the donor must substantiate that the par-

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<sup>21</sup> See *Linton v. Hasty*, 519 N.E.2d 161 (Ind. Ct. App. 1988). In *Linton*, the donor presented the engagement ring to the donee in July 1981, without any stated condition regarding the gift. During the following two years, the ring was exchanged back and forth several times. The court affirmed the trial court’s determination that sufficient evidence showed that no condition to marry was attached to the ring.

<sup>22</sup> *Id.*; *Coconis v. Christakis*, 70 Ohio Misc. 29 (Ohio Co. 1981). In *Coconis*, the court denied recovery of the engagement ring because there was no express condition of the return.

<sup>23</sup> *Linton*, at 161. The donor’s actions, such as continuing to be romantically involved with other women after giving the ring to the donee and multiple exchanging back and forth of ring between donor and donee, was sufficient evidence that no condition was attached to the ring.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Coconis*, 70 Ohio Misc. 29.

<sup>27</sup> *Id.* at 32

ties understand the gift of the engagement ring was conditional in nature.<sup>28</sup>

B. *Factors That Affect the Right of Recovery When the Engagement Terminates*

1. *Termination by Mutual Agreement*

Courts recognize that in the absence of a statute or special situations requiring the application of some paramount rule to the contrary, the donor may recover engagement gifts if the marriage does not ensue by agreement of the parties.<sup>29</sup> An Illinois court applied this theory of mutual agreement and determined that where parties agreed to break the engagement, the donor of an engagement ring was entitled to its recovery.<sup>30</sup> In that case the donor filed a replevin suit to recover the engagement ring he had given to the donee, alleging that she postponed the wedding indefinitely and refused to return the ring.<sup>31</sup> The donee filed a motion to dismiss contending that the replevin action was premised on the breach of a promise to marry but that donor's action was not brought in compliance with the requirements set forth in the Breach of Promise Act.<sup>32</sup> Nonetheless, the court de-

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<sup>28</sup> *Id.* at 29-32

<sup>29</sup> *Vann v. Vehrs*, 633 N.E.2d 102 (Ill. Ct. App. 1994); *Fierro*, 465 N.W.2d 669; *McIntire*, 585 N.E.2d 456; *Coconis*, 70 Ohio Misc. 29; *Schultz v. Duitz*, 69 S.W.2d 27 (Ky. 1934); *Ruehling*, 98 Pa. Super. 535; *See Tomko, supra* note 3, at § 19, at 1.

<sup>30</sup> *Vann*, 633 N.E.2d 102.

<sup>31</sup> *Id.* at 103.

<sup>32</sup> 740 ILL. COMP. STAT. ANN. 15/1 (West 1992). The legislative purpose of the Act is as follows: "It is hereby declared, as a matter of legislative determination, that the remedy heretofore provided by law for the enforcement of actions based upon breaches of promises or agreements to marry has been subject to grave abuses and has been used as an instrument for blackmail by unscrupulous persons for their unjust enrichment, due to the indefiniteness of the damages recoverable in such actions and the consequent fear of persons threatened with such actions that exorbitant damages might be assessed against them. It is also hereby declared that the award of monetary damages in such actions is ineffective as a recompense for genuine mental or emotional distress. Accordingly, it is hereby declared as the public policy of the state that the best interests of the people of the state will be served by limiting the damages recoverable in such actions, and by leaving any punishments of wrongdoers guilty of seduction to proceedings under the criminal laws of the state, rather than to the imposition of punitive, exemplary, vindictive or aggravated damages in actions for the

nied the motion. A bench trial determined that the engagement was broken by the actions of both parties, and granted a verdict for the donor.<sup>33</sup>

The appeals court affirmed that the parties broke their engagement because of the defendant's inability to set a new wedding date due to her constant traveling, the plaintiff's request that the ring be returned to him if the defendant did not set a new wedding date, the defendant's "cool" behavior when the plaintiff called the defendant in California, and the parties' failure to see each other for several months after their argument.<sup>34</sup> Regarding the recovery of the ring, the court followed the majority view and held that the donor of an engagement ring is entitled to its recovery "where the engagement is mutually broken."<sup>35</sup> The rationale for the rule is an engagement ring is a gift conditional on the subsequent betrothal of the parties, and when that condition fails, the donee no longer has any right to the ring.<sup>36</sup>

## 2. "Fault" Versus "No-Fault" of the Parties

In the last few decades, the United States experienced a major revolution in divorce law.<sup>37</sup> The emphasis shifted from a fo-

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breach of promise or agreement to marry. Consequently, in the public interest, the necessity for the enactment of the chapter is hereby declared as a matter of legislative determination." *Id.* The Act has several requirements. Section two provides that the "damages to be recovered in any action for breach of promise or agreement to marry shall be limited to the actual damages sustained as a result of the injury complained of." 740 ILL. COMP. STAT. ANN 15/2 (West 1992). Section three states that "no punitive, exemplary, vindictive or aggravated damages shall be allowed in any action for breach of promise or agreement to marry." 740 ILL. COMP. STAT. ANN 15/3 (West 1992). "Sections [four], [five], and [six] provide that a party bringing an action for the breach of promise to marry must notify the other party, within three months of the breach, of his or her intent to file suit and must file the suit within one year after the cause of action accrued." *Vann*, 633 N.E.2d at 104. See 740 ILL. COMP. STAT. ANN 15/4-6 (West 1992).

<sup>33</sup> *Vann*, 633 N.E.2d at 103.

<sup>34</sup> *Id.* at 105.

<sup>35</sup> *Id.* at 106

<sup>36</sup> *Id.*

<sup>37</sup> Doris Jonas Freed & Timothy B. Walker, *Family Law in the Fifty States: An Overview*, 19 FAM. L.Q. 331, 335 (1986). By 1986, with the passage by the South Dakota legislature of no-fault divorce provisions, all fifty states had adopted some form of no-fault divorce.



cus upon fault to acknowledgement that marriages rarely break up because one party is at fault while the other party is totally blameless. Essentially, courts view fault as a symptom rather than a cause of divorce. As a result, fault is not eliminated in divorces, but the proof of fault is not required in a majority of jurisdictions. In dealing with fault regarding broken engagements, American courts have generally extended this “no-fault” concept from divorce law.<sup>38</sup>

When a relationship has not ended by agreement, but due to the conduct of the parties, determining ownership of engagement rings, given in contemplation of marriage, turns on whether a jurisdiction follows a “fault” or a “no-fault” procedure. A fault-based approach requires the trier-of-fact to determine which party has caused the dissolution, while a no-fault approach awards title to engagement gifts by determining if they were given in contemplation of marriage.<sup>39</sup>

a. *Fault-based approach*

(i) *Termination through fault of the donor*

Prior to the surge of modern “no-fault” divorce proceedings, a majority of jurisdictions held or recognized that where the donor breaks the engagement, the donee has the right to possess the engagement ring or to recover its value.<sup>40</sup> In the following cases, the courts use principles of “fault” to determine rights to the engagement ring when the marriage does not ensue.

A Connecticut court relied on Roman Law which “provided for the return of betrothal gifts when the parties mutually dis-

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<sup>38</sup> See *Aronow v. Silver*, 538 A.2d 851, 854 (N.J. Super. Ct. Ch. Div. 1987) (determining that “the concept of no-fault divorce must have as its predicate the concept of no-fault engagements); *Vigil v. Haber*, 888 P.2d 455, 457 (N.M. 1994) (finding that according to “a modern trend, legislatures and courts have moved toward a policy that removes fault-finding from the personal-relationship dynamics of marriage and divorce”); *Brown v. Thomas*, 379 N.W.2d 868, 873-74 (Wis. Ct. App. 1985) (paralleling divorces with broken engagements and reasoning that the public policy preference for no-fault divorce should logically be extended to encompass broken engagements).

<sup>39</sup> *Lindh*, 742 A.2d 643.

<sup>40</sup> *Spinnell v. Quigley*, 785 P.2d 1149 (Wash. Ct. App. 1990); *Simonian v. Donoian*, 215 P.2d 119 (Cal. Ct. App. 1950); *Chester v. Ferri*, 26 Phila. Co. Rptr. 394 (Pa. D. & C.4th 1993); *White v. Finch*, 209 A.2d 199 (Conn. Cir. Ct. 1964); See *Tomko*, *supra* note 3, § 20, at 1.

solved the contract and for forfeiture by the party at fault when the repudiation was unjustified.”<sup>41</sup> The court stated that the prevailing view in the United States and England followed Roman Law in considering the fault of the parties and concluded that where the parties break an engagement due to the fault of the donor, he may not recover the ring.<sup>42</sup> The court viewed a promise to marry as an executory contract and stated that a breach occurs only when there is a “distinct, unequivocal, and absolute refusal to perform.”<sup>43</sup> The court reasoned that no words could have been more distinct or unequivocal than the donor’s: “‘As far as I am concerned, the engagement is through.’”<sup>44</sup> Here, the breach of the promise to marry surfaced through the actions and words of the donor; therefore the donee prevailed and retained title to the engagement ring.

Several Ohio courts have dealt with the issue of ownership of the engagement ring when the marriage does not ensue. In one view, the court in *Wion v. Henderson*,<sup>45</sup> held that absent an agreement to the contrary, the donee need not return an engagement ring when the donor unjustifiably breaks the engagement. The donor had filed a complaint in replevin alleging a conditional gift of a diamond engagement ring to the donee, where the donor

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<sup>41</sup> *White*, 209 A.2d at 201 (citing WILLIAM T. FRYER, READINGS ON PERSONAL PROPERTY (3d ed. 1938)).

<sup>42</sup> *White*, 209 A.2d at 201. In *White*, the decision is “based upon the theory that the ring is given upon an implied condition that the marriage will take place. The law construes a promise of marriage generally to be a promise to marry on request.” *Id.* However, such contracts are “seldom expressed in very definite language and they are not improperly or infrequently inferred as much from the conduct of parties toward each other as from any direct evidence or expressed stipulations.” *Id.* See *Schulz v. Duitz*, 69 S.W.2d 27 (Ky. Ct. App. 1934). In *Schulz*, the donor gave the donee an engagement ring as additional consideration for her promise of marriage, and then the donor voluntarily breached the contract. The donor could not invoke the aid of the law to relieve himself by recovery of the engagement ring. See *Lewis v. Permut*, 320 N.Y.S.2d 408 (N.Y. Civ. Ct. 1971). The *Lewis* court held that since the donor of the engagement ring broke off the engagement against the wishes of the donee, his former fiancée, the donee, was entitled to retain the ring.

<sup>43</sup> *White*, 209 A.2d at 201. The renunciation must be so distinct that its purpose is manifest and so absolute that the intention to no longer abide by the terms of the contract is beyond question.

<sup>44</sup> *Id.*

<sup>45</sup> *Wion v. Henderson*, 494 N.E.2d 133 (Ohio Ct. App. 1985).

had terminated the engagement one year later. The trial court found that the donor broke the engagement with the donee to marry his present wife, and therefore was at fault. The appellate court relied on the *Coconis* decision to affirm the trial court which held that “[t]he donor of an engagement ring can recover the gift only if the engagement is dissolved by agreement or if it is unjustifiably broken by the donee.”<sup>46</sup> The reviewing court articulated that implicit in the findings of fact was a finding of fault on the part of the donor and no fault on the part of the donee.

While a majority of lower courts recognize that where the donor breaks the engagement, the donee has the right to possess the engagement ring, it is important to recognize that these decisions predate the courts’ extension of the policy that removes fault-finding from the personal-relationship dynamics of marriage and divorce to encompass that of broken engagements.<sup>47</sup>

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<sup>46</sup> *Coconis v. Christakis*, 70 Ohio Misc. 29, 31 (Ohio Co. 1981). The burden of proving by a preponderance of the evidence the fact that the engagement was dissolved by agreement or by the donee without justification is upon the donor. In addition, should the donor establish that the dissolution was undertaken by the defendant, the donee would have a like burden to establish justification for her conduct.

*See* *Beberman v. Segal*, 69 A.2d 587 (N.J. Super. Ct. Law Div. 1949).

<sup>47</sup> *See* *Mate v. Abrahams*, 62 A.2d 754 (N.J. Co. 1948), the court upheld the defense that the donor had unjustifiably broken the engagement. The court reasoned:

“[O]n principle, an engagement ring is given, not alone as a symbol of the status of the two persons as engaged, the one to the other, but as a symbol or token of their pledge and agreement to marry. As such pledge or gift, the condition is implied that if both parties abandon the projected marriage, the sole cause of the gift, it should be returned. Similarly, if the woman, who has received the ring in token of her promise, unjustifiably breaks her promise, it should be returned. When the converse situation occurs, and the giver of the ring, betokening his promise, violates his word, it would seem that a similar result should follow, i.e., he should lose, not gain, rights to the ring. In addition, had he not broken his promise, the marriage would follow, and the ring would become the wife’s absolutely. The man could not then recover the ring. The only difference between that situation and the facts at bar, is that the man has broken his promise. How in principle can the courts aid him, under such circumstance, to regain a ring which he could not regain had he kept his promise? ‘No man should take advantage of his own wrong.’ Of course, were the breaking of the engagement to be justifiable, there would be no violation of the agreement legally, and a different result might follow.” *Id.* at 754-55.

(ii) *Termination through “fault” of the donee*

The courts have held that a donor who makes a gift of appreciable value and enduring nature to a fiancée may recover the gift if the donee breaks the engagement.<sup>48</sup> Once again in regard to the termination of the engagement, courts use principles of “fault” in determining the right to the engagement ring.

Pennsylvania courts have long recognized a cause of action for return of the engagement ring made on the condition of subsequent marriage. The general rule is as follows: “A gift to a person to whom the donor is engaged to be married, made in contemplation of marriage, although absolute in form, is conditional; and upon breach of the marriage engagement by the donee the property may be recovered by the donor.”<sup>49</sup> This rule was applied in *Chester v. Ferri*,<sup>50</sup> where the donor sought to recover the value of an engagement ring he gave to his former fiancée. Most Pennsylvania courts, at one time, recited an additional requirement for a donor seeking to recover an engagement ring: he or she must prove that the donee was responsible for the failure to marry.<sup>51</sup> The donee argued it was the donor’s behavior that caused the donee to break up, so he was “at fault” for the breakup and should not be entitled to recover the engagement ring.<sup>52</sup>

While the court in *Preshner v. Goodman*<sup>53</sup> permitted the donee to recover the value of an engagement ring where the donor repudiated the engagement and forcibly removed the ring from the donee’s finger, yet title of the engagement ring to the donee is not absolute. The courts may allow the donor to recover an engagement gift where the donor gave the donee some good reason to break off the engagement. In fact, the Pennsylvania courts have not delved into the issues of “fault” which might cause the

<sup>48</sup> See Tomko, *supra* note 3, § 21, at 1.

<sup>49</sup> *Stangler v. Epler*, 115 A.2d 197, 199 (Pa. 1955) (quoting *Ruehling v. Hornung*, 98 Pa. Super. 535, 538 (Pa. Super. Ct. 1930)).

<sup>50</sup> *Cheter V. Ferri*, 26 Phila. Co. Rptr. 394 (Pa. D. & C.4th 1993)

<sup>51</sup> See *Pavlicic v. Vogtsberger*, 136 A.2d 127, 131 (Pa. 1957) (ruling that the donee must breach the engagement); *Strangler*, 115 A.2d at 199 (stating that the marriage must not take place due to the fault of donee); *Murphy v. Studer*, 41 D. & C.2d 707, 715 (Pa. D. & C. 1966) (holding that the donee must break off the engagement).

<sup>52</sup> *Chester*, 26 Phila. Co. Rptr. at 404.

<sup>53</sup> *Preshner v. Goodman*, 83 Pa. D. & C. 387 (Pa. D. & C. 1952).

breakup of an engagement. As a matter of law, the donor was entitled to recover the engagement ring because the donee broke the engagement.

The fault rule has implied support in other jurisdictions. In Texas, courts have ruled that where the donor was without fault, the engagement gift must be returned to him.<sup>54</sup> Clearly, a donee who breaks the engagement, through no fault of the donor, must return the engagement ring. Similarly, a Massachusetts Supreme Court ruled that “upon the breaking of an engagement to marry by the woman without ‘adequate cause’ or ‘fault’ on the part of the man he was entitled in a suit in equity against her to have her ordered to return to him a ring given by him to her as an ‘engagement ring. . . upon the implied condition that . . . [they] would be married.’”<sup>55</sup> However, in a later case, the superior court responded to the rule. The donee argued that the donor may not recover the ring because he terminated the engagement. The court responded by stating that “[s]uch a broad rule may not be extracted from *DeCicco*: The person who terminates an engagement is not necessarily ‘at fault’. . . [s]ome engagements may be terminated by one party because of the other party’s improper behavior.”<sup>56</sup> The court denied summary judgment in the donor’s counterclaim to obtain return of an engagement ring that he gave to the donee.<sup>57</sup> In the last decade or two, the emphasis has shifted from a focus upon fault to recognition that engagements, just like marriages, rarely breakup because only one party was at fault.

b. “*No-fault*” approach

Recently, the focus of premarital law has shifted from the social consequences of broken engagements to the narrower question of who will keep the engagement ring.<sup>58</sup> The emphasis has shifted from a focus upon “fault” to a recognition of “no-

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<sup>54</sup> See *McLain v. Gilliam*, 389 S.W.2d 131 (Tex. App. 1965); *Shaw v. Christie*, 160 S.W.2d 989 (Tex. App. 1942).

<sup>55</sup> *DeCicco v. Barker*, 159 N.E. 2d 534 (Mass. 1959).

<sup>56</sup> *Poirer v. Raad*, 1995 Mass. Super. LEXIS 843, 8-9 (Mass. Super. Ct. 1995).

<sup>57</sup> *Id.* at 9.

<sup>58</sup> Rebecca Tushnet, Note, *Rules of Engagement*, 107 YALE L.J. 2583 (1998).

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fault” when an engagement breaks up. This is consistent with the general shift in attitudes toward marriage to the view that the law should not investigate the “murky depths”<sup>59</sup> of lost love, defeated aspirations and jilted parties. The history of the fault rule is set forth in *Aronow v. Silver*:<sup>60</sup>

[T]he fault rule is sexist and archaic, a too-long enduring reminder of the times when even the law discriminated against women. . . In ancient Rome, the rule was fault. When the woman broke the engagement, however, she was required not only to return the ring, but also its value, as a penalty. No penalty attached when the breach was the man’s. In England, women were oppressed by the rigidly stratified social order of the day. They worked as servants or, if not of the servant class, were dependent on their relatives. The fact that men were in short supply, marriage above one’s station rare and travel difficult abbreviated betrothal prospects for women. Marriages were arranged. Women’s lifetime choices were limited to a marriage or a nunnery. Spinsterhood was a centuries-long personal tragedy. Men, because it was a man’s world, were much more likely than women to break engagements. When one did, he left behind a woman of tainted repudiation and ruined prospects. The law, in a *de minimis* gesture, gave her the engagement ring, as a consolation prize. When the man was jilted, a seldom thing, justice required the ring’s return to him. Thus, the rule of life was the rule of law—both saw women as inferiors.<sup>61</sup>

To accept the ancient law is to ignore the constitutional insistence on equality of women—the Constitution of the United States prohibits discrimination based upon sex. While society unfortunately still discriminates, it no longer views a formerly engaged woman as “damaged goods” who needs a consolation prize—nor should the courts. Courts have the obligation to enforce laws that bar discrimination. By doing so, they can continue to shape an egalitarian reality.

A majority of jurisdictions maintain a fault-based approach to determine disputed ownership of the engagement ring. A growing minority, however, has adopted bright-line rules returning rings to donors following principles of modern “no-fault” divorce proceedings which emphasize the institutional concern that courts are not the place to investigate intimate relationships

<sup>59</sup> *Brown v. Thomas*, 379 N.W.2d 868 (Wis. Ct. App. 1985).

<sup>60</sup> *Aronow v. Silver*, 538 A.2d 851 (N.J. Super. Ct. Ch. Div. 1987).

<sup>61</sup> *Id.* at 853.

for fault.<sup>62</sup> In fact, every jurisdiction in the recent past where a state's appellate courts have had an opportunity to consider this issue has held that absent a specific agreement to the contrary, the engagement ring must be returned to the donor regardless of the circumstances of the termination of the engagement.<sup>63</sup> Historically, even jurisdictions that applied the fault-based approach to engagement rings cases have not done so recently, choosing instead to apply the no-fault rule.<sup>64</sup>

In 1971, in *Gaden v. Gaden*,<sup>65</sup> a New York court first rejected the fault requirement, reasoning that such a regime involves "dramatic courtroom accusations and counter-accusation" that "burden our courts with countless tales of broken hearts and frustrated dreams."<sup>66</sup> The court explained:

[I]n truth, in most broken engagements there is no real fault as such—one or both of the parties merely changes his mind about the desirability of the other as a marriage partner. Since the major purpose of the engagement period is to allow a couple time to test the permanency of their feelings, it would seem highly ironic to penalize the donor for taking steps to prevent a possibly unhappy marriage. Indeed, in one sense the engagement period has been successful if the engagement is broken since one of the parties has wisely utilized this time so as to avoid a marriage that in all probability would fail. Just as the question

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<sup>62</sup> Recent Case, *Property Law—Pennsylvania Supreme Court Holds That Engagement Rings Must Be Returned Regardless of Who Broke the Engagement—Lindh v. Surman*, 742 A.2d 643 (Pa. 1999), 113 HARV. L. REV. 1876 (2000); See Tomko, *supra* note 3, § 22, at 1.

<sup>63</sup> *Fierro v. Hoel*, 465 N.W.2d 669 (Iowa Ct. App. 1990); *Heiman v. Parish*, 942 P.2d 631 (Kan. 1997); *Meyer v. Mitnick*, 625 N.W.2d 136 (Mich. Ct. App. 2001); *Aronow*, 538 A.2d 851; *Vigil v. Haber*, 888 P.2d 455 (N.M. 1994); *Gaden v. Gaden*, 272 N.E.2d 471 (N.Y. 1971); *Gagliardo v. Clemente*, 580 N.Y.S.2d 278 (N.Y. App. Div. 1992); *Becker v. Mix*, 718 N.Y.S.2d 498 (N.Y. App. Div. 2001); *Leshowitz v. Conklin*, 665 N.Y.S.2d 593 (N.Y. App. Div. 1997); *Brown v. Learman*, 2000 Ohio App. LEXIS 5071 (Ohio Ct. App. 2000); *McIntire v. Raukhorst*, 585 N.E.2d 456 (Ohio Ct. App. 1989); *Lyle v. Durham*, 473 N.E.2d 1216 (Ohio Ct. App. 1984); *Lindh v. Surman*, 742 A.2d 643 (Pa. 1999); *Brown v. Thomas*, 379 N.W.2d 868 (Wis. Ct. App. 1985).

<sup>64</sup> *Clawson v. McCarthy*, 1995 Ohio App. LEXIS 1091 (Ohio Ct. App. 1995); *Gagliardo*, 580 N.Y.S.2d 278; *Aronow*, 538 A.2d 851.

<sup>65</sup> *Gaden*, 272 N.E.2d 471.

<sup>66</sup> *Id.* at 88-89. The court reversed an order denying recovery of an interest in real property transferred by the donor in contemplation of his remarriage to the donee. The court clearly stated that "a person, not under any impediment to marry, will no longer be denied the right to recover property given in contemplation of marriage which has not occurred." *Id.* at 85.

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of fault or guilt has become largely irrelevant to modern divorce proceedings, so should it also be deemed irrelevant to the breaking of the engagement.<sup>67</sup>

Most recently, New York courts have followed *Gaden* holding that the engagement ring or its value given to a donee in contemplation of marriage must be returned to the donor after the termination of their engagement.<sup>68</sup>

Consistent with the New York cases, courts in other jurisdictions have agreed that an engagement ring is given in contemplation of marriage, and thus is a unique type of conditional gift. Within the past few years, three state supreme courts have addressed this issue.<sup>69</sup> Most recently, in *Lindh v. Surman*,<sup>70</sup> the Supreme Court of Pennsylvania held that the donee must return the engagement ring or its equivalent, even when the donor broke the engagement without regard to fault.<sup>71</sup> In this case, Janis Surman accepted both the marriage proposal and the engagement ring from Rodger Lindh.<sup>72</sup> In less than two months, Rodger broke the engagement, and Janis returned the ring.<sup>73</sup> Shortly after reconciliation, Rodger once again proposed to Janis.<sup>74</sup> However, within a few months, Rodger renounced the engagement for a second time, but this time Janis kept the ring.<sup>75</sup>

Rodger filed a complaint against Janis seeking recovery of the ring or its equivalent worth. A panel of arbitrators determined that she could retain the ring. The Court of Common Pleas ruled in Rodger's favor applying no-fault principles, and on appeal, the Superior Court affirmed. Ultimately, the Supreme Court affirmed the Superior Court in a 4-3 decision.<sup>76</sup>

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<sup>67</sup> *Id.* at 88.

<sup>68</sup> *See* *Becker*, 718 N.Y.S.2d at 499; *Leshowitz*, 665 N.Y.S.2d 593. The courts, relying on *Gaden*, held in favor of the donor for the recovery of the engagement ring or its value since the ring was given to the donee in contemplation of marriage. The *Becker* court patently rejected the donee's "conclusory assertion that she accepted the diamond ring out of friendship and never intended to marry to donor." *Id.*

<sup>69</sup> *Lindh*, 742 A.2d 643; *Heiman*, 942 P.2d 631; *Vigil*, 888 P.2d 455.

<sup>70</sup> *Lindh*, 742 A.2d 643.

<sup>71</sup> *Id.*.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Lindh*, 742 A.2d at 643-44.

<sup>75</sup> *Id.* at 644.

<sup>76</sup> *Id.* at 647.



Justice Newman, writing for the court, noted that both parties agreed that the engagement ring was a conditional gift under Pennsylvania law.<sup>77</sup> The court first considered the merits of a fault-based approach. “Where one fiancée has truly ‘wronged’ the other, depending on whether that person was the donor of the ring or the donee, justice appears to dictate that the wronged individual should be allowed to keep, or have the ring returned.”<sup>78</sup> Unfortunately for the donee, the court did not address how the no-fault rule “affects the decisions of individuals contemplating engagement or how it unfairly burdens the donee.”<sup>79</sup> However, the court went on to reason that while a deter-

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<sup>77</sup> *Id.* at 644.

<sup>78</sup> *Id.* at 645.

<sup>79</sup> Recent Case, *Property Law—Pennsylvania Supreme Court Holds That Engagement Rings Must Be Returned Regardless of Who Broke the Engagement—Lindh v. Surman*, 742 A.2d 643 (Pa. 1999), 113 HARV. L. REV. 1876, 1879-81 (2000). The article applied law and economics theory, which analyzes incentives in individual bargaining and the incentive effects of contract remedies on the decision of a breach. Applying principles of law and economics, the author suggests that public policy promotes a modified no-fault decision. *Id.* at 1879-80.

[F]irst, under traditional contract analysis, courts should place liability on the party better able to estimate and control the risk of breach, with exceptions for such contingencies as the discovery of fraud. Assuming that a guarantee of the ring’s return will encourage a donor to invest in an engagement ring earlier in a relationship, the *Lindh* rule may result in the formation of engagements before any real commitment has been made. . . . Second, the desire to prevent opportunistic behavior supports a modified no-fault rule. Scholars have long recognized the economic inefficiency of moral hazards—that is, the tendency of individuals to exercise less care when insured against loss. Under a strict no-fault regime, courts effectively insure donors by ensuring that they will always get the rings back. Donors of engagement rings in no-fault state now have no financial disincentive to propose marriage casually. . . . Furthermore, a strict no-fault rule fails to alleviate the imperfect insurance problem inherent in engagements. Weddings are wonderful but expensive events, and broken engagements usually involve some financial loss, absent unique circumstances. Although the no-fault rule may minimize a donee’s reliance on the engagement ring as insurance against the economic costs of a broken engagement, most brides’ aversion to insuring against—or even thinking about—such a possibility further complicates the situation. This unrecognized need for insurance, on the one hand, and perhaps unrelated absence of an insurance market, on the other, suggest that a

mination of “right or “wrong” may have “superficial appeal” in outrageous situations, the complexity of modern relationships “makes the fault-based approach less desirable” because courts would be required to examine a person’s motives.<sup>80</sup> The *Lindh* court relied on the analysis of the Kansas Supreme Court in assessing the difficulties of a fault-based approach:

[W]hat is fault or the unjustifiable calling off of an engagement? By way of illustration, should courts be asked to determine which of the following grounds for breaking an engagement is fault or justified? (1) The parties have nothing in common; (2) one party cannot stand prospective in-laws; (3) a minor child of one of the parties is hostile to and will not accept the other party; (4) an adult child of one of the parties will not accept the other party; (5) the parties’ pets do not get along; (6) a party was too hasty in proposing or accepting the proposal; (7) the engagement was a rebound situation which in now regretted; (8) one party has untidy habits that irritate the other; or (9) the parties have religious difference. The list could be endless.<sup>81</sup>

According to the majority in *Lindh*, an inquiry into fault would “inevitably invite acrimony and encourage parties to portray their ex-fiancées in the worst possible light” in order to gain possession of property and preserve his or her own character.<sup>82</sup> Ultimately, this process would leave courts without a clear guideline in applying the rule.

In contrast to the fault-based approach, the *Lindh* court reasoned that a no-fault approach “involves no investigation into the motives or reasons for the cessation of the engagement and requires the return of the engagement ring simply upon the non-occurrence of the marriage.”<sup>83</sup> As a result, the court adopted the

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strict no-fault regime would be particularly costly for women donees, given their disproportionate role in financing the wedding. Allowing a disappointed bride to retain and then possibly to liquidate the engagement ring would provide them some protection in this imperfect market. *Id.* at 1880-81.

<sup>80</sup> *Lindh*, 742 A.2d at 645.

<sup>81</sup> *Heiman*, 942 P.2d at 637.

<sup>82</sup> *Lindh*, 742 A.2d at 646.

<sup>83</sup> *Id.* at 645. The *Lindh* court considered the merits of a fault-based theory which would require an assessment of who broke the engagement and entail a determination of why that person broke the engagement. The court went on to state that “where one fiancée has truly ‘wronged’ the other, depending on whether that person was the donor of the ring or the donee, justice appears to dictate that the wronged individual should be allowed to keep [the ring], or

strict nonadversarial approach of the no-fault rule which mirrored the neutral principles of the modern no-fault divorce approach adopted in some form by all fifty states.<sup>84</sup> This approach is the acclaimed “modern trend” in engagement ring cases. The court, in *Vigil v. Haber*,<sup>85</sup> described “this trend as representing a move “‘towards a policy that removes fault-finding from the personal-relationship dynamics of marriage and divorce.’”<sup>86</sup> Generally, most jurisdictions use a no-fault determination in the granting of a divorce decree and the division of marital property. Without question, fault in an engagement setting is difficult, if not impossible, to ascertain.<sup>87</sup>

Courts note that the “engagement period is one where each party should be free to reexamine his or her commitment to the other”<sup>88</sup> and “allow a couple time to test the permanency of their feelings”<sup>89</sup> to each other and to the commitment to marriage. In many cases, no real fault exists because one of the parties merely changes his or her mind and no longer desires the other as a marriage partner.<sup>90</sup> Imposing a penalty for the breach of a promise to marry would not serve the parties or public policy and would penalize the donor for acting to prevent what he believes may be an unhappy marriage.<sup>91</sup> Certainly, a broken promise to wed would better serve the public rather than broken marriage vows. Even so, after an engagement is broken, the ring, while once given on the glittering promise of betrothal and a token of the parties’ commitment to each other, only remains a symbol of lost love and unfulfilled dreams, and unlikely deemed a notable memento for the jilted party.<sup>92</sup> Regretfully, broken engagements foster damaged dignity, “anger and wounded egos,” yet they

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have [it] returned,” *id.* The difficulty is “determining who is ‘wrong’ and who is ‘right,’” given the complex circumstances of most relationships. *Id.*

<sup>84</sup> *Id.* at 646. See Doris Jonas Freed & Timothy B. Walker, *Family Law in the Fifty States: An Overview*, 19 FAM. L.Q. 331, 335 (1986).

<sup>85</sup> *Vigil v. Haber*, 888 P.2d 455 (N.M. 1994).

<sup>86</sup> *Lindh*, 742 A.2d at 646 (quoting *Vigil v. Haber*, 888 P.2d at 457).

<sup>87</sup> *Vigil*, 888 P.2d at 457; *Aronow*, 538 A.2d at 853.

<sup>88</sup> *Heiman*, 942 P.2d at 638.

<sup>89</sup> *Gaden v. Gaden*, 272 N.E.2d 471, 475 (N.Y. 1971).

<sup>90</sup> See *id.*; *McIntire v. Raukhorst*, 585 N.E.2d 456 (Ohio Ct. App. 1989); *Lyle v. Durham*, 473 N.E.2d 1216 (Ohio Ct. App. 1984).

<sup>91</sup> *Lyle*, 473 N.E.2d at 1217-19.

<sup>92</sup> *Heiman*, 942 P.2d at 638.

rarely entail significant questions, such as “changes in lifestyles and standards of living, that broken marriages involve.”<sup>93</sup>

All fifty states have now applied some form of no-fault principles to divorces on grounds of public policy.<sup>94</sup> Given this trend, it seems unreasonable to apply no-fault principles to divorces and the division of marital property, yet to require a fault-based determination as to ownership of the engagement ring in broken engagements. Not only would litigation regarding ownership of the engagement ring promote blatant accusations of fault and intensify ill-sentiment, but it would delay the parties’ ability to get on with their lives. Moreover, the establishment of guilt and innocence is not really even useful.<sup>95</sup> In reality, the determination of fault only becomes “lost in the murky depths of contradictory, acrimonious, and largely irrelevant testimony by disappointed couples, their relatives and friends.”<sup>96</sup>

It is possible that “extremely gross and rare situations” may justify a finding of fault, but fault ordinarily is not relevant to the ownership of an engagement ring.<sup>97</sup> Consistent with the modern trend toward abandonment of fault in domestic relations cases and other actions, the only relevant inquiry in such cases is whether the condition under which the gift was made has failed.<sup>98</sup> Just as in the case of marriages, “if the wedding is called off, for whatever reason, the gift is not capable of becoming a completed gift and must be returned to the donor” unless the parties have agreed in advance to the final disposition of the gifts.<sup>99</sup> Nonetheless, those gifts, by agreement, are not conditioned upon a subsequent marriage. A bright-line rule exists. An engagement ring is a conditional gift. When the implied condition of marriage is not met, the donor is entitled to recover the ring regardless of fault.

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<sup>93</sup> *Id.*

<sup>94</sup> *Lindh*, 742 A.2d at 646.

<sup>95</sup> *Brown v. Thomas*, 379 N.W.2d 868, 873 (Wis. Ct. App. 1985).

<sup>96</sup> *Heiman*, 942 P.2d at 637 (quoting *Brown*, 379 N.W.2d at 873).

<sup>97</sup> *Id.* at 638.

<sup>98</sup> John D. Perovich, Annotation, *Respect of Engagement and Courtship Presents When Marriage Does Not Ensur*, 46 A.L.R.3d 578, 583-84 (1972, Supp. 1994).

<sup>99</sup> *Fierro v. Hoel*, 465 N.W.2d 669, 672 (Iowa Ct. App. 1990).

### **III. Conclusion**

Following the modern trend, courts use the predominant theory of conditional gifts and the no-fault principles of the divorce code when deciding ownership of the engagement ring. As premarital law has evolved, an engagement ring is a unique type of conditional gift and when the condition of marriage is not fulfilled, the ring (or its value) is returned to the donor. It does not matter who broke the engagement or caused it to be broken, the essential fact is that the ring was given in contemplation of a marriage that never occurred. Thus, in absence of an agreement between the parties to the contrary, the engagement ring must be returned to the donor upon termination of the engagement. Fault is irrelevant. In other words, when a couple chooses to embark on the path leading to the altar and the donee accepts an engagement ring from the donor, then for whatever reason the conditional performance never reaches the altar, the ring must be restored to the donor without regard to fault for the demise of the relationship.

Barbara Frazier

