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Gifts: Recovery of Engagement Ring on Breaking of Engagement to Marry

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In this state, to entitle a wife to a divorce on the grounds of her husband's adultery, it is not necessary to prove him guilty beyond a reasonable doubt, but only to establish his adulterous relations by the weight of the evidence and to the satisfaction of the chancellor.[29]

This distinction made by the Kentucky statutes between husband and wife as to the number of acts of guilt necessary to constitute adultery is without foundation. The modern tendency of the law is to treat the husband and wife as if they stood on equal footing. No longer is it the policy of the law to treat the wife as if she were a part of the personal property of the husband. She is entitled to the same degree of conjugal respect that he is. The law should not be relaxed in favor of the wife, but made stricter in regard to the husband so as to hold both to the same standard of conjugal loyalty to each other and require both to obey God's commandment.

Surely some future general assembly will see the light and abolish this unjust discrimination, thus following the example of forty-two other states in dealing impartially with those who plight their mutual faith at the altar.

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GIFTS: RECOVERY OF ENGAGEMENT RING ON BREAKING OF ENGAGEMENT TO MARRY.

M gave W an engagement ring in consideration of her promise to marry him; at the same time each agreed and promised to marry the other. Approximately two years later M informed W of his unwillingness to perform his part of the contract and refused to marry her. A few days later while M and W were together, W took the ring from her finger and M took it from her hand and put it in his pocket. W demanded that the ring be returned to her possession, but M refused. W sued to recover the ring, if M still had it, or, if not, its value. *Held*, that the plaintiff was the owner of the ring and was entitled to it, or its value if the defendant did not have it.[1]

After a consideration of the problem as raised and decided in various cases the court concluded that where the donee breaches the contract, the donor has a right to recover any property or money which the donee received from the donor "in consideration of the marriage contract." The court went on to say that although the marriage contract may be supported by the promise of one to marry the other, i. e., the mutual promise of the parties, yet if the parties choose to promise or pay an additional consideration they will be bound thereby in the same manner as if it had been an ordinary commercial contract, for in modern ages the ring has become a part of the real consideration of the contract and can no longer be considered a mere custom or symbol. The court believed that the ring could be likened unto purchase money, or "earnest" money in a commercial

[29] *Supra*, Note 24.

[1] Schultz v. Duitz, 253 Ky. 135, 69 S. W. (2d) 27, 92 A. L. R. 600 (1934).

transaction given to bind the contract, and if the tract is not carried out due to some fault of the purchaser he cannot recover the "earnest" money that he has so paid.

From the reasoning of the court it would appear as a logical conclusion that the man gives his promise and a ring for the woman's promise.

In *Jacobs* v. *Davis*,[2] where a man was held entitled to recover an engagement ring after his fiancee had broken the engagement, the following history of the engagement ring was given:

> "We read in the book of Genesis that Abraham presented earrings when Rebecca was betrothed to Isaac; and, no doubt, the story represents the ring in those days as a sign or symbol of an agreement to carry out a bargain and sale of the woman. When one comes to the time of civilized law, the woman ceases to be a chattel, and one finds in Justinian the ring used as an 'arrhabo', or a pledge for the contract of marriage or sponsalia. This found its way even into early English law. Times, however, are changed now; but, though the origin of the engagement ring has been forgotten, it still retains its character of a pledge or something to bind the bargain or contract to marry, and it is given on the understanding that a party who breaks the contract must return it. Whether the ring is a pledge or a conditional gift, the result is the same. The engagement ring given by the plaintiff to the defendant was given upon the implied condition that it should be returned if the defendant broke off the engagement."

The man is entitled to the ring if the engagement is terminated through no fault of his.[3] In *Sloin* v. *Lavine*[4] the man was allowed to recover the ring in an action of replevin upon the ground that an engagement ring is a conditional gift by implication and must be returned when the engagement is broken by the donee.

The man is not entitled to the return of the ring if he was the one breaking the engagement,[5] or if the engagement was terminated by the woman because of the fault of the man.[6] In *Beer* v. *Hart*[7] the engagement was not unjustifiably breached by any act of the woman, but the failure to marry was due entirely to the lack of interest of the plaintiff. It was urged by the man that he was entitled to the ring regardless of the reason for the failure to marry. He based his claim upon the argument that the ring is only a symbol to the world that the parties to the engagement have plighted their troth; that to effect this purpose the ring must be worn. If after the engagement is broken the woman continues to wear the ring, the public becomes

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[2] (1917) 2 K. B. 532.

[3] Jacobs v. Davis, (1917) 2 K. B. 532; Sloin v. Lavine, 11 N. J. Misc. Rep. 899, 168 Atl. 849 (1933).

[4] 11 N. J. Misc. Rep. 899, 168 Atl. 849 (1933).

[5] Schultz v. Duitz, 253 Ky. 135, 69 S. W. (2d) 27 (1934); Beer v. Hart, 153 Misc. Rep. 277, 274 N. Y. Supp. 671 (1934); Cohen v. Sellar (1926), 1 K. B. 536.

[6] Beck v. Cohen, 237 App. Div. 729, 262 N. Y. Supp. 716 (1933).

[7] 153 Misc. Rep. 277, 274 N. Y. Supp. 671 (1934).

the victim of a deception as to the true relationship of the parties, for the woman would be representing that the man was still under an obligation to her. While admitting that the plaintiff's argument possessed a certain amount of logic, the court said that whether or not the woman may retain the ring depends upon whether or not the engagement was unjustifiably breached by her act; this is a determination of fact. If the breach was not due to her act, then she may retain the ring.

In an English case, *Cohen* v. *Sellar*,[8] where the woman plaintiff sued for breach of promise, there arose in the course of the trial the question which of the two litigants was entitled to the engagement ring. The jury found that the defendant had refused to carry out the promise of marriage and awarded the plaintiff both special and general damages, the latter for the loss of the marriage. Although the matter of the engagement ring had not been left to the jury, they expressed the suggestion that the ring should be returned to the defendant. The court decided that the plaintiff was entitled to keep the ring, for the man is not entitled to demand the return of the ring if he has, without a recognized legal justification, refused to carry out his promise of marriage. The court thought that the promise of marriage had many of the legal characteristics of a commercial bargain. And since the engagement is so considered, and is governed to such a great extent by the principles of law applied to ordinary contracts, the conditions which attach to a gift, such as an engagement ring, made in contemplation of marriage must be considered in relation to the incidents which flow from the engagement itself. Therefore, "Reliance cannot be placed on a self-induced frustration";[9] or in other words, "It is a principle of law that no one can in such a case take advantage of the existence of a state of things which he himself produced."[10] The same result will follow if the ring is regarded as a pledge or deposit for the fulfillment of the contract, for a person who without justification refuses to carry out the bargain will lose his deposit.

In *Beck* v. *Cohen*[11] the woman's promise to marry was induced by the man's fraud and thus his conduct prevented the marriage and the woman's refusal to perform the engagement was justified. The court said that an engagement ring is a symbol, and the idea that it is a conditional gift is inherent in its very purpose. During the time that the engagement exists the woman is entitled to the possession of the ring; when the marriage takes place such possession is changed into firm ownership. Since proof of an *express* condition is almost impossible of conception under the circumstances of an en-

[8] (1926) 1 K. B. 536.
[9] Bank Line v. Capel, (1919) A. C. 435, 452.
[10] New Zealand Shipping Co. v. Societe des Ateliers et Chantiers de France, (1919) A. C. 1, 6.
[11] 237 App. Div. 729, 262 N. Y. Supp. 716 (1933).

gagement, as a man in making the gift of the ring does not generally use language to the effect that if his betrothed should at a later date break the engagement she must return the ring, it is obvious that the obligation to return the ring is, by the very nature of the transaction, inherent. Since the gift must, in all justice, be considered conditional, the donor had by his own conduct rendered it impossible for the condition to be performed, and therefore he will not be held to be entitled to the ring.

If the engagement is dissolved by the mutual consent of the parties, the ring is to be returned to the man.[12] In *Wilson* v. *Riggs*[13] the return of the ring to the donor was accomplished by applying the principle that the ring was given upon the implied condition subsequent that if the parties did not wed without the fault of either, the ring should be returned.

In *Cohen* v. *Sellar*[14] there is dictum that in case of a dissolution of the engagement by mutual consent, and in the absence of any agreement to the contrary, the ring should be returned to the party giving it. It was also stated that if the marriage does not take place due to the death of, or due to any disability recognized by law on the part of the party giving the ring, it should be returned; and that to this later rule the "coronation" cases[15] should have no application.

That in the absence of an express agreement to the contrary the ring will become the absolute property of the woman if the marriage actually takes place, is probably the general rule, but in Kentucky the situation that arises when the parties are involved in a divorce action is governed by statute.[16]

When the donee breaches the engagement and is at the time an infant, the donor may recover the ring if the donee still has it;[17] but, if such donee does not have the ring itself the donor cannot recover its value.[18]

Where presents are made to introduce a man to a woman's acquaintance, and are used as a means of obtaining her favor, such presents are considered to be unconditional gifts and cannot be recovered by the donor.[19]

In Louisiana the question presented in this note is settled by statute,[20] for a donation made in contemplation of a future marriage

[12] Wilson v. Riggs, 267 N. Y. 570, 196 N. E. 584 (1935); see Cohen v. Sellar, (1926) 1 K. B. 536, 548.

[13] 267 N. Y. 570, 196 N. E. 584 (1935).

[14] (1926) 1 K. B. 536, 548.

[15] Krell v. Henry, (1903) 2 K. B. 740; Chandler v. Webster, (1904) 1 K. B. 493.

[16] Walter v. Moore, 198 Ky. 744, 249 S. W. 1041 (1923) (construing and applying Ky. Stat., Section 2121).

[17] Benedict v. Flannery, 115 Misc. Rep. 627, 189 N. Y. Supp. 104 (1921) (ring was one given in place of, or as, an engagement ring).

[18] Stromberg v. Rosenstein, 19 Misc. Rep. 647, 44 N. Y. Supp. 405 (1897); Yubas v. Witaskis, 95 Pa. Super. Ct. Rep. 296 (1928).

[19] Robinson v. Cummings, 2 Atk. 409 (1742).

[20] Civil Code La., art. 1740.

is made void as having been made without cause or consideration. In case the marriage does not take place the gifts may be recovered regardless of fault or by whom the breach was caused.[21]

From a review of the cases it appears that three theories are used, either separately or collectively, to support the decisions rendered, namely: (1) that the ring is a pledge, or comparable to "earnest" money; (2) that it is a conditional gift; and (3) that it is in the nature of "additional consideration".

The view that an engagement ring is given as a pledge is sustained by the history of betrothal gifts.[22] When the term pledge is used in its legal significance, an engagement ring cannot be called a pledge. In the case of a true pledge a party can recover the article if he breaks the contract provided he pays damages for the breach.[23] It cannot be said that the ring may be treated as liquidated damages for the breach of promise to marry by the man, for that would make the ring the measure of the value of the promise. At least one case refutes the theory that the ring can be treated as liquidated damages, for in *Cohen* v. *Sellar*[24] although the woman was allowed to keep the ring it was not on the ground of liquidated damages, because she had already been awarded damages for the breach of promise. This is all the more forceful when one considers the suggestion of the jury that the ring be returned, even though damages for the breach of promise had been awarded. Also there must be a right of redemption in the pledgor,[25] and the pledgee's right to possession terminates when the purposes of the pledge have been fulfilled.[26] This would mean that when the marriage takes place the purposes of the pledge would have been fulfilled and the man would be entitled to possession of the ring. What must be meant, when an engagement ring is referred to as a pledge, is that it is a token or symbol of the plighted troth.

That the ring is a conditional gift seems to be a more sound basis than that it is a pledge. Whether a gift of personalty with a condition attached can be made appears to be a controverted question, for there are cases both allowing[27] and denying[28] such a gift. The condition as to gifts of engagement rings is usually considered to be subsequent, and, by the force of circumstances, implied. There seems to be

[21] Deceurs v. Bourdet, 10 La. App. 361, 120 So. 880, (1929); Wardlaw v. Conrad, 18 La. App. 387, 137 So. 603 (1931).

[22] 2 Pollock and Maitland, The History of English Law (2d ed. 1923), p. 366.

[23] Goodeve, Personal Property (5th ed.), p. 28.

[24] (1926) 1 K. B. 536.

[25] 49 C. J. 900, Sec. 13.

[26] *Id.*, at 943, Sec. 87.

[27] Worth v. Case, 42 N. Y. 362 (1870); Flint v. Ruthrauff, 26 App. Div. 624, 53 N. Y. Supp. 206 (1898), *affd.* 163 N. Y. 588, 57 N. E. 1109 (1900); Blanchard v. Sheldon, 43 Vt. 512 (1871); Univ. of Vermont v. Wilbur's Estate, 105 Vt. 147, 163 Atl. 572 (1933).

[28] Irish v. Nutting, 47 Barb. (N. Y.) 370 (1867); Doty v. Wilson, 47 N. Y. 580 (1872); Balling v. Manhattan Sav. Bank, Etc., Co., 110 Tenn. 288, 75 S. W. 1051 (1903).

no reason on principle why the gift may not be made upon such a condition. It is illogical to expect that the condition would be express under the circumstances, for any thought that the marriage will not be performed must be the one thing that the parties do not contemplate. Granting that the intention of the parties at the time the gift was made should be carried out, nevertheless the implied condition finds support in the fact that in the great majority of the instances in which an engagement is broken "usually good sense secures the return of the ring."[29]

The conception that the ring is an "additional consideration" seems to have been suggested first in the principal case,[30] although the court was probably influenced by an earlier Kentucky case[31] wherein the property rights pursuant to a divorce were being determined. A recovery under this theory might be had where the engagement is broken due to no fault of the man on the ground of failure of consideration. The theory of a conditional gift and the theory of "additional consideration" are irreconcilable, for one of the essentials of a gift is the absence of consideration, but the fact that the consideration may be inadequate does not make the transaction a gift.[32]

It is submitted that the theory of a conditional gift is not only possessed of the greater merit as a legal basis upon which to ground the decisions, but it is also more nearly the actual fact as the transaction is viewed by the parties to the engagement, and should be used in arriving at a proper decision in cases when the good sense of the parties does not secure the return of the ring upon the engagement being broken.

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INSURANCE: THE SUBSTANTIAL PERFORMANCE RULE IN REGARD TO CHANGE OF BENEFICIARIES.

In considering the question of to what extent the so-called "substantial performance" rule applies in the case of an attempted change of beneficiaries in a policy of life insurance, or in a mutual benefit certificate, it is necessary to define the term as popularly understood. In Vance on Insurance is found a concise statement which will serve as a definition: "A clearly proved intention to make the change is not sufficient, if any of the formal requirements are lacking, except: (b) when the insured has done all in his power to comply with such requirements, but has failed to surrender the policy because it is beyond his control, equity will protect the rights of the intended beneficiary; or (c) if the insured has pursued the courses pointed out by the policy (old line) or by-laws (mutual benefit associations), and has done all required of him to effect a change, but dies before

[29] Jacobs v. Davis, (1917) 2 K. B. 532, 533.
[30] Schultz v. Duitz, 253 Ky. 135, 69 S. W. (2d) 27 (1934).
[31] Walter v. Moore, 198 Ky. 744, 249 S. W. 1041 (1923).
[32] Childs, Personal Property (1914), Sec. 223.