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The Rules of Engagement

As a conditional gift, the ring must be returned to the donor if the wedding doesn't occur

It is a starry summer night in the garden, and the fragrance of flowers is in the air. The young lover drops to one knee before the beautiful woman he adores and professes his desire to spend the rest of his life with her. In his hand is the brilliant diamond ring, the symbol of their love. With tears in hers eyes and an emotional voice, she communicates her agreement that she shall become his wife. Upon receiving the happy answer, he says to her: "...now you know, this ring is only yours if we go through with the wedding ceremony."

This young man need not ruin the scene with an absurd articulation of the legal condition under which the engagement ring is given. Although romantic notions would surely prevent such a scene from occurring, the law recognizes that the engagement ring is a conditional gift. A New Jersey court first adopted this legal theory in 1933, drawing upon precedents from foreign jurisdictions. *Sloin v. Lavine*, 11 N.J. Misc. 899 (Sup. Ct. 1933). The modern analysis of this issue is set forth in *Aronow v. Silver*, 223 N.J. Super. 344 (Ch. Div. 1987), and it remains the law today, as made clear by the Appellate Division in *Winer v. Winer*, 241 N.J. Super. 510

(App. Div. 1990). As a conditional gift, if the condition is not met — if the wedding never occurs — then the engagement ring is not a completed gift and the donor is entitled to the return of the ring.

The law implies this legal condition because of the symbolic nature of an engagement ring. The distinction between an engagement ring and an ordinary gift is perfectly illustrated in *Albanese v. Indelicato*, 25 N.J. Misc. 144 (N.J. Dist. Ct. 1947). In *Albanese*, the plaintiff gave his fiancée an engagement ring and subsequently gave her another piece of jewelry, a dinner ring. When the engagement was broken, the plaintiff was entitled to the return of the engagement ring, but not the dinner ring. The court reasoned that the dinner ring was an outright gift. Although the donor was motivated by the fact that the parties were engaged when the dinner ring was given, the law implied no condition in the giving of that gift. The dinner ring was a "token of love and affection," but it did not have the symbolic significance of the engagement ring.

Recognizing the engagement ring as a conditional gift is a clear and simple enough legal concept, but what if our Romeo is really Casanova, and what if Juliet breaks off the engagement when she learns of his other amorous interests? What if Romeo simply wimps out, gets cold feet and backs out? Shouldn't Juliet be entitled to keep the

ring because of Romeo's fault in ending the relationship? Early New Jersey cases, such as *Mate v. Abrahams*, 62 A.2d 754 (N.J. Cty. Ct. 1948), and *Berberman v. Segal*, 6 N.J. Super. 472 (Law Div. 1949), and a majority of states said yes, relying upon an assessment of fault in the analysis of this issue. The majority rule is that the man is entitled to the return of the engagement ring if the woman unjustifiably breaks off the engagement, or if the engagement is ended by mutual consent — otherwise the woman may keep the ring. From this point of view, the ring represents a pledge or something to bind the bargain or contract to marry, and the party that breaks the contract must return the ring.

In New Jersey today, however, fault is irrelevant and this no-fault concept appears to be the modern trend. The law in New Jersey was made clear in *Albanese*, in which the court plainly stated: "It does not matter who broke the engagement. A person may have the best reasons in the world for so doing. The important thing is that the gift was conditional and the condition was not fulfilled."

In *Aronow* the court examined the majority rule of fault, citing its history in Roman law and the English common law. The court commented that fault grounds fail to consider women as equals. In Roman times, the woman who broke off the engagement was obligated to return the ring and pay a penalty, but there was no penalty in the case of a man ending the engagement. In England, a woman breaking off the relationship was also required to return the ring, but if the man broke the

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engagement, she was entitled to keep the ring. In *Aronow*, the court reasoned that applying the majority rule of the past either penalized a woman or demeaned her by allowing her, as a rejected, "tainted" woman, to keep the ring as a "consolation prize." The court rejected fault grounds as sexist and archaic. The court reasoned that modern notions of equality and practical considerations regarding the presentation of proofs, which were the basis for the no-fault divorce statute, N.J.S.A. 2A:34-2, should equally apply to the law of broken engagements.

The *Aronow* court commented on the practical problem of assessing fault:

What fact justifies the breaking of an engagement? The absence of a sense of humor? Differing musical tastes? Differing political views? The painfully-

learned fact is that marriages are made on earth, not in heaven. They must be approached with intelligent care and should not happen without a decent assurance of success. When either party lacks that assurance, for whatever reason, the engagement should be broken. No justification is needed. Either party may act. Fault, impossible to fix, does not count.

The court went on to cite a New York case, *Gaden v. Gaden*, 323 N.Y.S.2d 955 (1971), which questioned the wisdom of penalizing a donor for acting to prevent what might be an unhappy marriage. The rule in New Jersey is clear: the engagement ring is a conditional gift that must be returned in

the event there is no marriage, regardless of fault.

What if a marriage is followed by divorce? Is the ring marital property which was acquired in contemplation of marriage, which should be equitably distributed? While that logic might seem to be more in line with modern notions of equality, that is not the answer. The engagement ring was a conditional gift, which became a completed gift upon marriage. Although interspousal gifts given during the marriage are generally subject to equitable distribution, premarital gifts from any source are not. The engagement ring is still a premarital gift and is not subject to equitable distribution. If things fall apart before the marriage, Juliet returns the ring, but after the wedding it's all hers. ■