

CAPPY, Justice, dissenting.

The majority advocates that a strict no-fault policy be applied to broken engagements. In endorsing this view, the majority argues that it is not only the modern trend but also the approach which will eliminate the inherent weaknesses of a fault based analysis. According to the majority, by adopting a strict no fault approach, we will remove from the courtroom the necessity of delving into the inter-personal dynamics of broken engagements in order to decide which party retains possession of the engagement ring. This view brings to mind the words of Thomas Campbell from *The Jilted Nymph*: “Better be courted and jilted than never be courted at all.” As I cannot endorse this approach, I respectfully dissent.

An engagement ring is a traditional token of the pledge to marry. It is a symbol of nuptial intent dating back to AD 860. The engagement ring was to be of a valued metal representing a financial sacrifice for the husband to be. Two other customs regarding the engagement ring were established in that same century: forfeiture of the ring by a man who reneged on a marriage pledge; surrender of the ring by the woman who broke off an engagement. See Charles Panati, *Extraordinary Origins of Everyday Things* (copyright 1987). This concept is consistent with conditional gift law, which has always been followed in Pennsylvania. *Stanger v. Epler*, 382 Pa. 411, 115 A.2d 197 (1955); *Ruehling v. Hornung*, 98 Pa.Super. 535 (1930); C.J.S. Gifts § 61. When the marriage does not take place the agreement is void and the party who prevented the marriage agreement from being fulfilled must forfeit the engagement ring. *Pavlicic v. Vogtsberger*, 390 Pa. 502, 136 A.2d 127 (1957).

The majority urges adoption of its position to relieve trial courts from having the onerous task of sifting through the debris of the broken engagement in order to ascertain who is truly at fault and if there lies a valid justification excusing fault. Could not this theory justifying the majority's decision be advanced in all other arenas that our trial courts must venture? Are broken engagements truly more disturbing than cases where we ask judges and juries to discern possible abuses in nursing homes, day care centers, dependency proceedings involving abused children, and criminal cases involving horrific, irrational injuries to innocent victims? The subject matter our able trial courts address on a daily basis is certainly of equal sordidness as any fact pattern they may need to address in a simple case of who broke the engagement and why.

I can envision a scenario whereby the prospective bride and her family have expended thousands of dollars in preparation for the culminating event of matrimony and she is, through no fault of her own, left standing at the altar holding the caterer's bill. To add insult to injury, the majority would also strip her of her engagement ring. Why the majority feels compelled to modernize this relatively simple and ancient legal concept is beyond the understanding of this poor man.

Accordingly, as I see no valid reason to forgo the established precedent in Pennsylvania for determining possession of the engagement ring under the simple concept of conditional gift law, I cannot endorse the modern trend advocated by the majority.

Respectfully, I dissent.

Justices CASTILLE and SAYLOR join this dissenting opinion.

CASTILLE, Justice, dissenting.

I dissent from the majority's opinion because I do not believe that a no-fault policy should be applied to broken engagements and the issue of which party retains the engagement ring. The Restatement of Restitution, § 58 comment c, discusses the return of engagement rings and states that:

Gifts made in the hope that a marriage or contract of marriage will result are not recoverable, in the absence of fraud. Gifts made in anticipation of marriage are not ordinarily expressed to be conditional and, although there is an engagement to marry, if the marriage fails to occur without the fault of the donee, normally the gift cannot be recovered. If, however, the donee obtained the gift fraudulently or if the gift was made for a purpose which could be obtained only by the marriage, a donor who is not himself at fault is entitled to restitution if the marriage does not take place, even if the gift was money. If there is an engagement to marry and the donee, having received the gift without fraud, later wrongfully breaks the promise of marriage, the donor is entitled to restitution if the gift is an engagement ring, a family heirloom or other similar thing intimately connected with the marriage, but not if the gift is one of money intended to be used by the donee before the marriage.

I believe that the Restatement approach is superior to the no-fault policy espoused by the majority because it allows equity its proper place in the outcome. Here, it is undisputed that appellee twice broke his engagement with appellant. Clearly, appellant was not at fault in the breaking off of the couple's engagement, and there is no allegation that she fraudulently induced appellee to propose marriage to her twice. Fairness dictates that appellant, who is the innocent party in this couple's ill-fated romantic connection, retain the engagement ring, which was given to her by appellee as an unconditional gift. I would therefore reverse the order of the Superior Court.

Justices CAPPY and SAYLOR join this dissenting opinion.

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560 Pa. 1, 742 A.2d 643