



Diamonds are Forever... Maybe?

by Shari Scalone

There is a long-standing history of presenting an engagement ring as a token of one's devotion and in contemplation of marriage. However, the symbol of eternal love may not culminate in nuptials; as such, the principles of contract law have been used to determine which party gets to keep the engagement ring.

There are two schools of thought with regard to entitlement to a ring in the case of a broken engagement. The majority rule, including Florida, considers fault. Under this theory, the party who is at fault should be denied the ring, either the donor or the donee, unless there was an agreement that the ring would be returned upon termination of the engagement. Where the engagement is expressly terminated by the mutual consent of the parties, the general view is that the donor may obtain recovery. In this way, the cancellation by mutual consent essentially abrogates the condition upon which the ring was held. By contrast, under the minority rule, fault does not matter; the gift of an engagement ring is a conditional gift and, where the condition fails, the ring should be returned to the donor.

The Florida court in *Gill v. Shively*,

320 So.2d 415 (Fla. 4th DCA 1975), stated that the donor of the engagement ring may recover the ring if the engagement is terminated by the donee or by mutual consent of the parties. The appellant/donor gave the appellee/donee a diamond engagement ring worth approximately \$3,620.42. *Id.* at 416. Two weeks later, the appellee said she did not feel she was ready for marriage. *Id.* The appellant brought a replevin action for return of the ring, but his complaint was dismissed. The court of appeal reversed, holding that the ring was not an absolute gift but was conditioned on the consummation of the marriage. The condition failed. Thus, appellant had a valid cause of action.

In sum, based on the law in Florida, the donor would be entitled to the recovery of an engagement ring when either the donee or both parties mutually decided to terminate the engagement. However, there appears to be no such claim to recover the ring when it is the donor who breaks off the engagement. It is important to note that each case is fact specific in determining fault. There are numerous circumstances that exist that may militate against a particular result, i.e. the donee had been unfaithful or had done some other bad act that

would result in inequity. Another circumstance which may sway the court pertains to cases where the ring is a family heirloom. In such a case, the court might be moved by principles of equity to award the ring to the donor who can show sentimental value attached to the ring. All the same, the courts, in view of legal principles taking precedence over equitable principles, are still likely to award the donee the engagement ring where the elements of gifting have been fulfilled.

In conclusion, the courts view the giving of a ring in contemplation of marriage as a conditional gift. Because engagement rings hold a great deal of sentimental and monetary value, the issue of ownership of the engagement ring has become intensely litigated. **B**



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