

If you have watched any television over the holiday season, you have undoubtedly been subjected to the seemingly never-ending barrage of jewelry commercials portraying husbands and boyfriends surprising their wives and girlfriends with fine rings, bracelets, necklaces, etc. Of course, the jewelry companies are hoping to convince their male audience that the answer to happily ever after lies in their ability to give their significant other a perfect (and hopefully expensive) piece of jewelry. What the jewelry companies don't worry about is this|who gets to keep the jewelry if things do not work out as expected? In 2009, I was involved in several cases where I had to answer that question.

The three most common scenarios that could lead to a dispute over who gets to keep expensive jewelry that was given as a gift during the course of a marital or premarital relationship are as follows:

(1) A man gives a woman an engagement ring which she accepts but the marriage is called off before the wedding;

(2) One spouse receives jewelry from the other spouse or the other spouse's family as part of the wedding ceremony but the marriage ends in divorce; or

(3) One spouse receives jewelry from the other spouse as a Birthday or Christmas present but the marriage ends in divorce.

Normally, a gift given to one spouse by the other becomes the receiving spouse's separate property, meaning it is not subject to reconveyance or equitable division in the event of a future divorce. Thus, in scenarios (2) and (3) above, the jewelry would generally remain in the hands of the spouse that received it as a gift. The caveat is that under Georgia law, the person claiming the gift has the burden to prove that the donor intended the jewelry as an unconditional gift, that the gift was accepted, and that the gift was actually delivered or received. Any factual dispute as to whether there was or was not a gift under the law must be decided by a judge or jury.

However, engagement rings are different because the law assumes that an engagement ring is

only given in contemplation of marriage and is therefore subject to the implied condition that it is to be returned if the engagement is broken. It should be noted though, if the woman attempts to give the ring back to the man and he refuses, the law will view this refusal as the man's intent to allow the woman to keep the ring unconditionally. Therefore, if the man later changes his mind and asks for the ring back he will have no recourse. This point was interestingly made by Justice Musmanno of the Supreme Court of Pennsylvania in a 1957 case:

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 sands of irresolution and procrastination the gift must be restored to the donor. A fortiori would this be true when the donee not only refused to sail with the donor, but, on the contrary, walks up the gangplank of another ship arm in arm with the donor's rival.

So it appears that in normal circumstances, a disappointed fiance is entitled to recoup his jewelry expenses while a disappointed husband is not.