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For This Ring, **I Thee Sue**

Who bears the cost of a lost or stolen ring after a broken engagement?

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A woman walking her dog in Riverside Park on Manhattan's Upper West Side is mugged at gunpoint. The mugger divests her of not only her purse and cell phone, but the diamond engagement ring given to her by her fiancé. The mugger is never caught, and the ring—which is uninsured—is never recovered.

Three weeks later, the woman breaks off the engagement. Approximately one month thereafter, the woman receives a demand letter from counsel for her now former fiancé. That letter asserts that upon dissolution of the couple's engagement, the right to possession of the ring reverted to the woman's ex-fiancé; and that, given that she no longer has the ring to return to him, the woman is obligated to reimburse him for its monetary value.[1]

Is the letter correct as a matter of New York law? In fact, the issue that it raises is one of first impression in this state. As discussed below, the rule has long been that engagement rings are not like other gifts where title passes immediately to the recipient, and that a ring or its cash value must be returned to the donor should an engagement end for any reason. The premise behind this policy is to return the parties to their pre-engagement status.[2] But no authorities in this state address what happens if the ring was lost or stolen without fault of the donee prior to the termination of the engagement, and the ring is uninsured.[3] In this article, we will discuss the relative merits of various potential rules to address who bears the financial risk in such a situation.

Basic Rule Under §80-b

The rights and obligations of the parties with respect to an engagement ring that was presented solely in contemplation of their anticipated nuptials are governed by New York Civil Rights Law §80-b, subtitled "Gifts Made in Contemplation of Marriage." It provides:

> Nothing in this article contained shall be construed to bar a right of action for the recovery of a chattel … or the value thereof at the time of such transfer … when the sole consideration for the transfer of the chattel, money or securities or real property was a contemplated marriage which has not occurred … .[4]

Section 80-b, enacted in 1965, codified earlier court decisions that had held an engagement ring to be in the nature of a conditional gift: When the ring is slipped onto a finger, the recipient acquires possession but not ownership. Title to the ring does not pass until the marriage occurs.[5] Thus, a "traditional principle of New York law" holds that "an engagement ring is the property of the male donor when an engagement is terminated."[6]

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The Court of Appeals has held that "[t]he clear purpose of section 80-b is to return the parties to the position they were in prior to their becoming engaged, without rewarding or punishing either party for the fact that the marriage failed to materialize."[7] In explaining why §80-b is a no-fault statute, the court noted that a rule directing an examination into which party was to blame for the breaking of the engagement "would only burden our courts with countless tales of broken hearts and frustrated dreams."[8]

But what happens if the ring is lost or stolen during the engagement period, rendering its return impossible and precluding the return of the parties to their status quo ante? Due in part to the small size of a ring, the inadvertent loss of an engagement ring is a frequent occurrence; a google search using the terms "lost engagement ring" yields some 6,940,000 hits.[9] Should the party that received the ring automatically bear the cost of the loss, even if all that he or she did was wear the ring according to its intended purpose?[10]

Section 80-b does not specifically speak to the scenario of a missing ring at the time of dissolution of the engagement. Moreover, our research has uncovered no reported decision from any New York court addressing the question of whether §80-b applies where an engagement ring is lost or stolen prior to an end of the engagement.[11] In the absence of any precedent on point, let alone controlling authority, how should the law treat the parties in a case where the ring was lost or stolen during the engagement period?

Toward a Resolution

First possibility: strict liability for the donee.

It would be easy for a court to read §80-b rigidly, and to insist that the statute's reference to "recovery of a chattel … or the value thereof" makes no exceptions for instances where the ring was lost or stolen prior to the termination of the engagement period. Under such an interpretation of the statute, the donee would be strictly liable to pay the value of the ring[12] to the donor, without even an inquiry into whether the loss of the ring proximately resulted from any misconduct or negligence. The donee would be required to pay for the ring even if, as in our hypothetical, it had been stolen from her by an armed assailant.

In our view, such a facile construction of the statutory language would contravene the fundamental purpose of the statute to "return the parties to the position they were in prior to their becoming engaged, without rewarding or punishing either party for the fact that the marriage failed to materialize."[13] Remitting the value of the ring to the donor restores the donor's initial financial position, but at the expense of the donee, who would be worse off than before the parties became engaged. Such an asymmetrical outcome, contrary to the legislative intent, would effectively punish the donee for the fact that the engagement did not ultimately lead to the peal of wedding bells.

When the ring is slipped onto a finger, the recipient acquires **possession but not ownership.** Title to the ring does not pass until the marriage occurs.

An alternative basis for holding the donee solely liable would be a bailment theory, which would posit that during the engagement period, the donee is akin to a bailee of the ring and acquires a concomitant duty to protect the ring from loss. However, this theory is not a perfect fit. Even a bailee is not held *strictly* liable if the bailed property disappears.[14] Moreover, in a traditional bailment situation, where a ring is entrusted to a jeweler for repair or consignment, the jeweler would rightfully be expected to secure the ring in a safe or similar lockbox.[15] By contrast, engagement rings traditionally are exchanged as visible tokens of commitment, with the expectation that the donee will display the ring to the world. Yet, the risk of loss is inherent in wearing the ring. The appropriate rule would take that reality into account, instead of treating the loss of the ring during ordinary wear as a breach of "bailment" duties.

Second possibility: both parties share equally in the loss.

Recognizing that it would be impossible to simultaneously restore both parties to their initial positions once the ring is gone, one alternative resolution would be a "Solomonic" one: absent a showing that the donee had stolen or sold the ring or mishandled it in a manner that proximately led to its loss (rather than simply wearing it for the intended purpose), the parties would split the monetary loss equally. Thus, upon dissolution of the engagement, the donee would be liable to remit to the donor one-half of the value of the missing ring.

Such a "50-50" rule would better effectuate the intent of the statute. Though both parties would end up worse off than they were prior to the engagement, neither party would be more disadvantaged than the other by application of such a rule. Further, this outcome acknowledges the practical reality that either party likely could have insured the ring, or contributed to the cost of such insurance.

An additional advantage of splitting equally the risk of loss is that in comparison to a rule that places the risk entirely on one party or the other, it would reduce the perverse incentives for a party to convert the ring during the engagement period.[16] Thus, the "50-50" rule may be more consistent with a "no fault" approach that seeks to avoid embroiling the parties and the court in fact and credibility disputes, such as disputes as to whether one of the parties stole the ring from the other.

One drawback of this rule is that it risks penalizing the donee—who did not necessarily request or choose a ring of a certain value, yet upon receipt of the ring would assume an obligation to return half the cost in the event that it is later lost or stolen.

Third possibility: no liability for the donee, absent a showing of negligence or conversion.

Another possibility is that where the ring was lost or stolen through no provable fault of the donee, the law leave the parties where it finds them—in other

words, that the donor absorb 100 percent of the loss of an uninsured ring, absent a showing of intentional misconduct or negligence (beyond merely wearing the ring as intended) on the part of the donee. Such a rule would incentivize the donor to insure the ring at the time of purchase,[17] thereby avoiding uncertainty as to liability in the event that the ring later disappears (at least assuming the insurer pays out on the claim). In looking to the donor as the preferred party to insure the ring, this rule appears to make some sense, given that under §80-b the donor retains an ownership interest in the ring during the engagement period.

Our Recommendation

Both an equal division of the loss, and a rule imposing the risk of loss on the donor, seem to us to be preferable to strict liability for the donee in cases involving engagement rings that are lost or stolen during the engagement period. On balance, we prefer the "50-50" approach as the best among imperfect alternatives. When an engagement dissolves, no one can change that an unfortunate outcome has occurred—one that is often painful and upsetting for the parties. However, the law should not add insult to injury by requiring either party to disproportionately bear costs ensuing from the demise of the engagement. This is particularly so where those costs arose without legally cognizable fault of either party.

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1. The scenario presented in this hypothetical is fictional; however, the authors of this article recently defended a client against claims by her former fiancé for the alleged value of a ring lost during the engagement period. (There was no insurance on the ring.) That case was resolved through settlement, the terms of which are confidential.

2. There are two principal exceptions to this general rule. First, the ring may not fall under the statute if it was a gift that was not given solely in contemplation of marriage—for example, if it was gifted on a birthday. See *DeFina v. Scott*, 195 Misc.2d 75, 77 (Sup. Ct. N.Y. Cty. 2003). However, courts in this state have applied "a strong presumption … that any gifts made during the engagement period are given solely in consideration of marriage, and are recoverable if the marriage does not occur." *Velez v. Rodriguez*, 42 Misc.3d 133(A), 2014 N.Y. Slip Op. 50053(U), at *2 (App. Term 2d Dep't Jan. 10, 2014). The second exception provides that if either party is already married when the engagement ring is gifted, the donor forfeits any future entitlement to recover the ring. See generally *Lowe v. Quinn*, 27 N.Y.2d 397, 401-02 (1971); but see *Lipschutz v. Kiderma*n, 76 A.D.3d 178, 185 (2d Dep't 2010) (recovery permitted if donor who gave engagement ring to married woman could prove unawareness of woman's marriage at time ring bestowed).

3. Such insurance may be available as either a stand-alone policy, or a rider to a homeowner's or renter's policy. However, absent a specific rider, expensive personal property such as jewelry is typically not covered under homeowner's or renter's insurance. Further, some insurance policies only provide coverage if the ring is stolen, and not merely lost.

4. N.Y. Civ. Rights L. §80-b.

5. See 11 N.Y. Prac. New York Law of Domestic Relations §4:4, Courtship: Engagement Rings (citing cases).

6. *DeFina*, 195 Misc.2d at 77. The reference to a "male donor" in *DeFina* is outdated in view of marriage equality, as same-sex marriage has been legally recognized in New York since 2011. In 2014, the Wall Street Journal cited a survey finding that 66 percent of female same-sex couples and 19 percent of male same-sex couples purchased engagement rings. See Charlie Wells, "Jewelers Woo Engaged Same Sex Couples," Wall St. Journal, March 12, 2014. (The same article reported that "[m]any gay couples buy two engagement rings, one for each partner." Id. In such cases, it may be difficult to divide the couple into a "donor" and "donee"; and the obligations of the parties under §80-b if their engagement terminates, even if neither of the rings is lost, may be unclear.)

7. *Gaden v. Gaden*, 29 N.Y.2d 80, 88-89 (1971); accord *Billittier v. Clark*, 43 Misc.3d 1223(A), 2014 N.Y. Slip Op. 50758(U), at *2 (Sup. Ct. Erie Cty. March 31, 2014) ("[M]ost of the reported decisions in New York reflect adherence to the legislative intent of §80-b *to restore the parties to their pre-engagement status* by returning the engagement ring to its donor." (emphasis added)).

8. *Gaden*, 29 N.Y.2d at 88. Although the statute is most often invoked in cases involving engagement rings, by its terms it applies to any type of property, including real property or money, gifted in sole contemplation of marriage. For example, it has been held to apply to payments to third-party vendors made by one of the prospective spouses in preparation for the wedding. See *DeFina*, 195 Misc.2d at 78-80. In *DeFina*, the court referenced commentary to the effect that women were historically "the economic losers" when required to return the ring or its value—so long as the law did not permit recovery on the same basis of all wedding outlays made by either party. 195 Misc.2d at 79 (citations omitted). The court in *DeFina* held that the woman had a lien against her ex-fiancé's condominium to the extent of her contribution to the wedding expenses.

9. The search was performed on June 30, 2015, without quotation marks surrounding the search terms.

10. A related question is whether, if the ring was damaged before the engagement was broken off, the donee should bear the cost of its diminution in value. On this question, too, New York precedents are devoid of guidance.

11. One trial court opinion in Westchester County, *Calautti v. Grados*, No. 31182/10, 32 Misc.3d 1205(A), 2011 WL 2556950 (Sup. Ct. Westchester Cty. May 5, 2011), assumed that the donee was liable for the value of a lost engagement ring, based on the premise that she would have had to return the ring had it still been available. In *Calautti*, the ring was allegedly lost *after* the termination of the parties' engagement, and thus after the right to possession had reverted to the male donor. The defendant's affidavit in the case indicates that following the break-up, defendant had acted in a manner the judge termed "careless" by carrying the ring around loosely in her purse, forgetting about it, and noticing only some two weeks later that it had gone missing. Aff. of Lizbeth Grados in Opp. to Mot. for Summary Judgment in *Calautti v. Grados* dated March 15, 2011, at ¶ 3. Further, the opinion in the case reflects that the defendant resisted summary judgment based on purported issues of fact, such that the question of the appropriate allocation of risk of loss under §80-b was never presented to the court. See *Calautti*, 2011 WL 2556950, at *2 (noting that "defendant, in her opposition papers, does not specifically argue that plaintiff does not have the right to recover the engagement ring [or its value]").

12. The method of valuation (on which §80-b is also silent) raises its own set of thorny issues. Should the measure of recovery be the original purchase price? The appraised value, which is often inflated? The replacement cost?

13. *Gaden*, 29 N.Y.2d at 88-89.

14. See generally 9 N.Y. Jur.2d, Bailments and Chattel Leases, §60 ("[W]here a bailment exists, the mere fact that the bailed item is lost does not make the bailee liable to the bailor; rather, liability depends on a showing of negligence or conversion." (footnote omitted)).

15. See *Klein v. Sura Jewelry Mfg.*, 53 A.D.2d 854 (2d Dep't 1976) (affirming finding that jeweler, with whom ring was placed on consignment, was negligent in storing ring in unlocked safe in unlocked room, from which ring was stolen during robbery of premises).

16. If the risk of loss were borne entirely by the donee, the donor would have an incentive to steal the ring if a termination of the engagement seemed imminent and then seek a double recovery by demanding reimbursement from the donee for the value of the ring. Conversely, if the risk of loss were borne entirely by the donor, the donee, if already planning to break up with the donor, would have an incentive to steal the ring and then claim that it had been lost or stolen. Admittedly, under a "50-50" rule, either party could still convert the ring, knowing that it would only be on the hook for one-half of the ring's value—thereby coming out ahead. But the reduced monetary gain would decrease the temptation for either party to risk the consequences of committing theft and perjury, as compared to the incentives under the alternative rules.

17. A survey conducted by Jewelers Mutual, an industry group, found that 60 percent of engagement rings are not insured prior to the proposal. Chelsea Drusch, "The Little Known Way to Ruin the Perfect Proposal," The Jewelry Box Blog (Oct. 14, 2014), http://info.jewelersmutual.com/the-jewelry-box/the-little-known-way-to-ruin-the-perfect-proposal.