

Can I get the engagement ring back?

December 27, 2012 | by Einhorn Barbarito

Dear Ask the Attorney:

About a year ago, I proposed to my girlfriend with an amazing ring. She accepted and we were going to be married in Spring of 2013. Unfortunately, we broke up. Now I want to get the ring back but she won't give it to me. What can I do?

J.L

Our guest blogger today is Linda Mainenti-Walsh, Esq. who is Counsel to Einhorn, Barbarito, Frost & Botwinick, PC. She concentrates her practice on Matrimonial and Family Law, including divorce, prenuptial agreements and custody issues.

Dear J.L.,

Of course it was an "amazing" ring; otherwise, your former fiancé would likely not be refusing to give it back. What she needs to understand is that she may not have the legal right to retain the ring as she has not held up her end of the bargain.

Engagement rings have, for centuries, been symbolic; it is manifestation of a promise to marry. It seems we can attribute the use of diamonds in engagement rings on Archduke Maximilian of Austria to Mary of Burgundy in 1477 as a diamond betrothal ring. The origins of engagement can be found in the Jewish Torah and the practice was later adopted in ancient Greece at which time the giving of the ring was eventually adopted by Roman marriage law. The ring would be presented by the fiancé after swearing an oath of marriage intent. It is this "promise" that creates an obligation that needs to be fulfilled in order to retain the ring.

While the law varies from state to state, in New Jersey, if an engagement is broken, the recipient of the engagement ring must return it to the individual who gave the ring if the ring was given for the purpose of signifying engagement to be married between the parties. The engagement ring is a gift conditioned upon marriage. If the condition precedent (the marriage) does not take place, the condition is not fulfilled and the ring must be returned.

Note, the law requiring the return of the engagement ring is not an award of punitive damages as there is no action under our law in New Jersey for a breach of contract to marry. Instead, it is a right to recover a conditional gift. A claim for damages based upon breach of contract to marriage has been barred since 1935 by the Heart Balm Act, a New Jersey statute. This right to recover an engagement ring can be pursued by bringing an action. You do not have to prove fault as fault will not be considered by the Court. Our Courts have observed that the fault rule is “sexist” and “archaic” and a painful reminder of a time when the law discriminated against women.

The reasons for the breakup of the engagement or which party broke the engagement does not matter; a person may have good reasons or reasons that appear unjustifiable to the other party. Likewise, the value of the ring has no significance. However, in either case, if the marriage did not take place, the engagement ring should be returned.

For this reason, once the parties are married and later they are divorced, the engagement ring is retained by the recipient as the condition of marriage has been fulfilled even though the marriage is later dissolved. Note, however, if the ring was modified during the marriage in any manner, such as the diamond being placed in a new setting, the ring may be subject to equitable distribution in the divorce as the new setting may make the ring wholly or partially considered an interspousal gift. Interspousal gifts, i.e. gifts between husband and wife during a marriage, are generally subject to equitable distribution in divorce.

However, you mention in your question that you gave the ring to her girlfriend “about a year ago”. If this was a Holiday Gift, she may not have to give the ring back. This is because if a ring is given on a holiday such as Christmas or a birthday, the ring may be considered a gift for the holiday, birthday or occasion, rather than an engagement ring, and the ring may not have to be returned.

If the return of the ring is important to you, you should consider retaining an experienced matrimonial attorney to have them file an action seeking a judgment for her to return the ring to you. Additionally, it is advisable to keep a picture of the ring and the receipt, along with an appraisal, if possible. A picture with your fiancé wearing the ring would also be helpful as well in case the ring “disappears.”

“Ask the Attorney” is a blog in which answers to your legal questions submitted to asktheattorney@einhornlawyers.com may be answered. The answers to the questions are for informational purposes only and are not to be construed as legal advice or the creation of an attorney-client relationship. The facts of each case is different, therefore you should seek competent legal representation.