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## Whose Fault Is It Anyway?: Analyzing The Role “Fault” Plays in the Division of Premarital Property if Marriage Does Not Ensur

### Cover Page Footnote

J.D. Candidate, May 2015, The Catholic University of America, Columbus School of Law; B.A., 2010, Syracuse University. The author would like to thank the staff and editors of the Catholic University Law Review for their tremendous work in bringing this Comment to publication and Professor Geoffrey R. Watson for his helpful feedback throughout the writing process. She would also like to extend a sincere thank you to her parents, Rich and Karen, for their guidance and constant encouragement. Finally, she would like to thank her husband, James, for his love and support through life and his lack of insecurity when she decided to write about failed engagements during their own.

# WHOSE FAULT IS IT ANYWAY?: ANALYZING THE ROLE “FAULT” PLAYS IN THE DIVISION OF PREMARITAL PROPERTY IF MARRIAGE DOES NOT ENSUE

Arielle L. Murphy<sup>+</sup>

A professional basketball player and a beautiful socialite fall in love. He gives her a twenty-carat diamond ring to express his intention to marry, and they believe their love will never end. But if it does, after only 72 days of marriage, what happens next?

From 2011 to 2013, Kris Humphries and Kim Kardashian engaged in a highly publicized battle about who would keep the diamond ring after the dissolution of their marriage.<sup>1</sup> Eventually, Ms. Kardashian quietly returned the ring to her ex-husband,<sup>2</sup> but was he legally entitled to it?

The tradition of giving a ring in anticipation of marriage dates back to the Egyptian empire.<sup>3</sup> Egyptian men placed a ring on “the third finger of [their bride’s] left hand,”<sup>4</sup> which “we now know as the ring finger.”<sup>5</sup> They believed

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1. See THR Staff, *Kris Humphries Auctions Off Kim Kardashian’s Engagement Ring*, HOLLYWOOD REPORTER (Oct. 16, 2013), <http://www.hollywoodreporter.com/news/kris-humphries-auctions-kim-kardashians-648944> (discussing the facts of the couple’s marriage dissolution battle).

2. Justin Ravitz, *Kim Kardashian’s Engagement Ring from Kris Humphries Sells at Auction for \$749,000*, US WEEKLY (Oct. 15, 2013, 2:40 PM), <http://www.usmagazine.com/celebrity-style/news/kim-kardashians-ring-from-kris-humphries-sells-at-auction-for-620000-20131510>; Maureen O’Connor, *Kim Kardashian’s Cursed Engagement Ring for Sale*, NEW YORK MAG. (Sept. 12, 2013, 11:19 AM), <http://nymag.com/thecut/2013/09/kim-kardashians-cursed-engagement-ring-for-sale.html>.

3. See Stefano Rapisarda, Note, *A Ring on the Little Finger: Andreas Capellanus and Medieval Chiromancy*, 69 J. WARBURG & COURTAULD INST. 175, 177 (2006) (providing an overview of the Egyptian origins of the ring tradition and its influence today); see also BETHANNE PATRICK & JOHN THOMPSON, AN UNCOMMON HISTORY OF COMMON THINGS 81 (2009) (relating the history of the engagement ring back to the ancient Egyptians and Romans).

4. See PATRICK & THOMPSON, *supra* note 3, at 81 (discussing the Egyptian and Roman tradition of placing “wedding rings on [the third] finger”).

5. Reno Charlton, *The History of Engagement Rings and Wedding Bands*, EZINE ARTICLES (Mar. 31, 2005), <http://ezinearticles.com/?The-History-of-Engagement-Rings-and-Wedding-Bands&id=24579> (stating the significance of the “fourth finger,” which is what is often referred to as the “ring finger” if the thumb is counted).

this finger “was connected to the *vena amoris* that led directly to the heart.”<sup>6</sup> Roman men gave their bride a metal ring, which symbolized ownership more so than love.<sup>7</sup> In more modern history, European royalty initiated the custom of gifting luxurious engagement rings to their betrothed.<sup>8</sup> The first recorded gifting of a diamond ring as a symbol of impending marriage was by Archduke Maximilian of Austria in 1477, who announced his engagement to Mary of Burgundy by giving her a diamond ring.<sup>9</sup>

At the turn of the twentieth century, diamonds became significantly more affordable due to the discovery of an abundant supply in South Africa, which enabled more men to afford diamond rings for their future wives.<sup>10</sup> In twentieth-century America, a man would give an engagement ring to a woman for financial security rather than affection, because if one party broke off the engagement, she had little chance of finding another man to provide for her.<sup>11</sup>

In today’s lucrative wedding industry, Americans spend a significant amount of money each year on engagement rings and wedding bands in anticipation of marriage.<sup>12</sup> The amount of money spent often leads to disputes between the

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6. PATRICK & THOMPSON, *supra* note 3, at 81; *see also* Rapisarda, *supra* note 3, at 177 (exploring the origin of the ring finger tradition in antiquity).

7. Charlton, *supra* note 5; *see also* Dave Padgett, *The Complete History of the Engagement Ring (Part 2)*, D & R HOUSE DIAMONDS (July 5, 2013), <http://www.dandhouseofdiamonds.com/the-complete-history-of-the-engagement-ring-part-2/> (“The difference between Roman and Egyptian wedding bands was [Roman bands] were also a symbol of ownership not just love.”).

8. *Engagement Rings . . . Their Long and Bright History*, THE HOUR (Norwalk), Feb. 3, 1979, at 27, available at <http://news.google.com/newspapers?nid=1916&dat=19790203&id=KOcgAAAAIBAJ&sjid=FW4FAAAAIBAJ&pg=1458,877997> (discussing the history of diamond engagement rings, including Queen Victoria’s impact on their growth and design in the United States).

9. *Id.*; *see also* Brooke A. Blecher, *Broken Engagements: Who Is Entitled to the Engagement Ring?*, 34 FAM. L.Q. 579, 579 (2000) (“Ever since the fifteenth century when Archduke Maximilian of Austria gave Mary of Burgundy a gold ring with diamonds, brides-to-be have been enthralled with diamond rings.”).

10. *See* Eric Goldschein, *The Incredible Story of How DeBeers Created and Lost the Most Powerful Monopoly Ever*, BUS. INSIDER (Dec. 19, 2011, 2:00 PM), <http://www.businessinsider.com/history-of-de-beers-2011-12?op=1> (analyzing the impact that the South African diamond discovery had on the American diamond industry and the increased marketing of the engagement ring); *see also* COLIN NEWBURY, *THE DIAMOND RING: BUSINESS, POLITICS, AND PRECIOUS STONES IN SOUTH AFRICA, 1867–1947* 1 (1989); Margaret F. Brinig, *Rings and Promises*, 6 J.L. ECON. & ORG. 203, 203–04 (1990) (discussing the increased availability of diamond rings following the discovery of diamond mines in South Africa in 1880).

11. *See* Brinig, *supra* note 10, at 204–05 (discussing the economics of marriage and relating the loss in financial security to the woman’s loss of her virginity). *See also* REBECCA ROSS RUSSELL, *GENDER AND JEWELRY: A FEMINIST ANALYSIS* 119–22 (2010) (analyzing how women have used jewelry as means of monetary security in cases where their husband dies or leaves them, and how “jewelry and gemstones [were] their main method of banking value and to ensure their own financial security” because traditionally, women were not entitled to inherit wealth or property directly).

12. *The Wedding Report*, BRIDAL ASS’N AM. (2006), [http://www.bridalassociationofamerica.com/Wedding\\_Statistics/#costbreakdown](http://www.bridalassociationofamerica.com/Wedding_Statistics/#costbreakdown). In 2006, the Bridal Association of America

parties when the engagement is broken prior to marriage, and these disputes may require litigation to be resolved.<sup>13</sup>

Courts in the United States have struggled to come up with an equitable and consistent method of determining which party is entitled to property accumulated in anticipation of marriage.<sup>14</sup> Often, the central issue combines property law, contract law, and family law to determine the party that should retain the ring after the engagement's dissolution.<sup>15</sup> Courts have generally treated engagement rings and gifts made in contemplation of marriage differently from other "gifts"—but the question has been, and to an extent remains, should they?<sup>16</sup>

Until the middle of the twentieth century, most states incorporated "breach-of-promise" lawsuits into family law jurisprudence, allowing a man or woman to seek damages against the person who broke his or her promise to marry.<sup>17</sup>

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conducted a study to determine the amount of money spent on weddings each year in the United States. *Id.* They found that the average American groom spends \$4,411 on an engagement ring, totaling \$10,025,526,238 per a year. *Id.* Additionally, the average American couple spends \$2,067 on wedding bands, totaling \$4,697,891,064 per year. *Id.* The amount spent on weddings bands each year totals \$4,697,891,064. *Id.*

13. *See, e.g.,* Thorndike v. Demirs, No. CV055000243S, 2007 WL 2363411, at \*1 (Conn. Super. Ct. July 26, 2007) (discussing difficulties inherent to litigating lawsuits where a hotly contested item, such as an engagement ring, is at issue).

14. *See* Aronow v. Silver, 538 A.2d 851, 852–54 (N.J. Super. Ct. Ch. Div. 1987) (stating that there is a split amongst courts regarding "the disposition of engagement rings" that revolves around the importance of "fault").

15. *See, e.g.,* Albinger v. Harris, 48 P.3d 711, 716–22 (Mont. 2002) (using the property law subset of gifts to determine that an engagement ring is an irrevocable *inter vivos* gift, and aspects of contract law, such as unjust enrichment, to conclude that the donee is entitled to keep the ring regardless of the fault of the parties); Vigil v. Haber, 888 P.2d 455, 457 (N.M. 1994) (looking to New Mexico's no-fault policy in the divorce context to establish that the fault policy is an outdated method of determining which party is entitled to keep the engagement ring); Lindh v. Surman, 742 A.2d 643, 645 (Pa. 1999) (using contract law and property law to find that "the giving of an engagement gift [has] an implied condition that the marriage must occur in order to vest title in the donee; mere acceptance of the marriage proposal is not the implied condition for the gift"). Additionally, the court in *Vigil* wrote, "[f]ollowing a modern trend, legislatures and courts have moved toward a policy that removes fault-finding from the personal-relationship dynamics of marriage and divorce." *Vigil*, 888 P.2d at 457. *See also* Barbara Frazier, Comment, "But I Can't Marry You": Who Is Entitled to the Engagement Ring When the Conditional Performance Falls Short of the Altar?, 17 J. AM. ACAD. MATRIMONIAL LAW. 419, 419 (2001) ("The ownership of gifts given to the other party during the engagement period is often an issue."); Rebecca Tushnet, Note, *Rules of Engagement*, 107 YALE L.J. 2583, 2591 (1998) ("Engagement rings in particular have spurred much litigation, in part because they are the most common engagement gifts.").

16. *See* Tushnet, *supra* note 15, at 2583–84, 2599–2607 (discussing the reasoning behind the courts' tendencies to view engagement rings as conditional gifts rather than irrevocable *inter vivos* gifts). *See also* Harris v. Davis, 487 N.E.2d 1204, 1206 (Ill. App. Ct. 1986) (stating that under Illinois law, "a gift given in contemplation of marriage is deemed to be conditional on the subsequent marriage of the parties").

17. *See* MICHAEL GROSSBERG, GOVERNING THE HEARTH: LAW AND THE FAMILY IN NINETEENTH-CENTURY AMERICA 33–38 (1985) (discussing the availability of breach-of-promise suits to recover remedies sought by jilted fiancées). *See also* GINGER S. FROST, PROMISES

During litigation, courts were forced to analyze why the engagement ended in order to investigate the “fault” of the parties involved and award any damages that resulted therefrom.<sup>18</sup> Later courts imported the fault analysis used in breach-of-promise suits into cases brought to retain engagement rings.<sup>19</sup> These breach-of-promise suits, which involved the court’s invasion into the romantic relationships of parties, were often referred to as “heartbalm suits.”<sup>20</sup>

In response to this growing body of law from the judiciary, state legislators began passing an abundance of “antiheartbalm” statutes.<sup>21</sup> Two factors particularly drove the movement: fear of the legal system’s excessive intrusion into the personal lives of litigants, and fear that women could purposefully court wealthy men who could later refuse to marry them just to bring a breach of promise to marry suit once the engagement ended.<sup>22</sup> Courts also began to reconsider how to analyze suits in replevin to recover engagement rings.<sup>23</sup> Presently, the courts’ treatment of pre-engagement property can be grouped into three methodologies.<sup>24</sup>

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BROKEN: COURTSHIP, CLASS, AND GENDER IN VICTORIAN ENGLAND 80–97 (1995) (describing the availability of similar remedies in nineteenth-century England).

18. See *Meemken v. O’Hara*, 66 N.W.2d 601, 603–04 (Minn. 1954) (holding that the plaintiff was entitled to damages resulting from a breach of the promise to marry by defendant, her supposed ex-fiancé, because defendant was at fault for the engagement’s termination since he refused to marry her after they had engaged in sexual intercourse and plaintiff had left her husband to marry him); *Hahn v. Bettingen*, 83 N.W. 467, 467–68 (Minn. 1900) (reversing the trial court’s finding that the woman could recover lost opportunity damages for a broken engagement because she was at fault for the original engagement that she ended to accept the defendant’s proposal); *Trammell v. Vaughan*, 59 S.W. 79, 81–82 (Mo. 1900) (holding that the woman could maintain a breach-of-promise suit because the man’s behavior after contracting a venereal disease showed that he was at fault for the broken engagement and that he had never intended to marry the woman). See also Robert C. Brown, *Breach of Promise Suits*, 77 U. PA. L. REV. 474, 474 (1929) (describing the breach-of-promise suit as a drama ready-made for the courtroom).

19. See, e.g., *Beberman v. Segal*, 69 A.2d 587, 587–88 (N.J. Super. Ct. Law Div. 1949) (“[The engagement ring] can be recovered by the man, if the agreement to marry [was] dissolved by mutual consent, or the woman unjustifiably br[oke] off the engagement, but cannot be recovered by him if he unjustifiably br[oke] the agreement it evidences.” (citing *Mate v. Abrahams*, 62 A.2d 754, 754–55 (N.J. Essex County Ct. 1948)); see also *Mate*, 62 A.2d at 754–55 (“When . . . the giver of the ring, betokening his promise, violates his word, it would seem that a similar result should follow, i.e., he should lose, not gain, rights to the ring.”).

20. See Tushnet, *supra* note 15, at 2586.

21. See *id.* (providing a history of the heartbalm suits and their development into the antiheartbalm statutes between 1930 and 1950).

22. See *id.* at 2586–87 (discussing the rise of anti-heartbalm acts due to a growing belief that “heartbalm actions attracted undue attention”). See also Brown, *supra* note 18, at 491–93 (“[T]here is nothing to prevent the plaintiff from concocting a case out of her own head, and supporting it by unblushing perjury.”).

23. See Tushnet, *supra* note 15, at 2591–92 (analyzing engagement ring suits in the anti-heartbalm era and the introduction of property and contract law to the judicial analysis).

24. See David M. Cotter, *This Diamond Ring Doesn’t Shine for Me Anymore: Who Is Entitled to Possession of Engagement Presents When No Marriage Occurs*, 14 DIVORCE LITIG. 148, 156

Under the first method, the “fault approach,” the court scrutinizes the facts to determine which party was at fault in the engagement’s termination.<sup>25</sup> Under the second method, the no-fault approach in favor of the donor, the court does not factor into its analysis the reason the engagement ends, but returns the ring to the original owner.<sup>26</sup> Under the third method, the no-fault approach in favor of the donee, the court views the ring as an *inter vivos* gift, which allows the party who received the ring to keep it.<sup>27</sup> With neither Supreme Court precedent nor a federal statute to consult, states continue to disagree on how to resolve this issue.<sup>28</sup>

This Comment analyzes how different states divide property accumulated in anticipation of marriage, with a specific focus on the engagement ring. Part I of this Comment compares the fault approach traditionally employed by some states with the no-fault approach, which recently became the predominant method in the United States. Next, Part II of this Comment analyzes the three rationales currently used by U.S. courts and balances their benefits and failures. Part III of this Comment evidences that a no-fault approach, in favor of the donor, best serves the interests of fairness, privacy, predictability, and justice. Ultimately, this Comment argues that the states should adopt a liberal, no-fault approach, with exceptions for extraordinary circumstances, such as unconscionability.

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(2002) (acknowledging the three possible rules that courts will apply to lawsuits over engagement rings from failed engagements).

25. *See, e.g., Stienback v. Halsey*, 251 P.2d 1008, 1011–13 (Cal. Dist. Ct. App. 1953) (discussing the various faults of respective parties in the termination of their betrothal and how these behaviors factor into the award from the court); *Harris v. Davis*, 487 N.E.2d 1204, 1205–06 (Ill. App. Ct. 1986) (stating that there is no question the defendant ended the engagement, which entitles the plaintiff to the value of the ring); *Ricketts v. Duble*, 177 So. 838, 840–41 (La. Ct. App. 1938) (discussing how the facts surrounding the termination of the engagement led to the ultimate judgment that the ring was to be returned to the donor).

26. *See Fierro v. Hoel*, 465 N.W.2d 669, 670–72 (Iowa Ct. App. 1990) (discussing the states that apply the no-fault approach in favor of the donor).

27. *Albinger v. Harris*, 48 P.3d 711, 716–22 (Mont. 2002) (determining that, under Montana law, the donee is always entitled to the engagement ring, no matter which party caused the engagement’s failure).

28. *Compare Harris*, 478 N.E.2d at 1206 (holding that the plaintiff was entitled to the engagement ring because the defendant was at fault for the marriage not occurring, and stating that because “defendant failed to perform on the condition of the gift . . . [he] had no right either to retain the ring or to dispose of it”), *with Heiman v. Parrish*, 942 P.2d 631, 635–38 (Kan. 1997) (analyzing multiple cases in the no-fault line of reasoning to reach the conclusion that “fault is ordinarily not relevant to the question of who should have ownership and possession of an engagement ring after the engagement is broken”).

I. COURTS HAVE SHIFTED THEIR APPROACH ON ENGAGEMENT RING SUITS  
FROM VIEWING THE RING AS AN INTER VIVOS GIFT TO A CONDITIONAL GIFT  
WITH A NO-FAULT ANALYSIS

A. *The Decline of the Traditional View of an Engagement Ring as an Inter Vivos Gift Created the Modern View of the Engagement Ring as a Conditional Gift*

1. *The Engagement Ring as an Irrevocable Inter Vivos Gift*

Until the early- to mid-twentieth century, most American courts considered an engagement ring to be the same as any other gift exchanged between people.<sup>29</sup> Most early-twentieth-century courts in the United States held that, unless the engagement's failure rested absolutely with the donee, the donee was entitled to the ring.<sup>30</sup> Courts utilized the traditional elements of an *inter vivos* gift to determine if an engagement ring met the definition of a gift and, therefore, could be labeled irrevocable.<sup>31</sup> As a matter of law,

[t]o make a valid *inter vivos* gift the donor must intend to make an irrevocable present transfer of ownership, there must be a delivery of the gift, either by a physical delivery of the subject of the gift or a constructive or symbolic delivery, and there must be acceptance by the donee."<sup>32</sup>

Under this analysis, courts were often forced to consider whether the donor *intended* to make an irrevocable gift or a gift conditioned upon the marriage taking place.<sup>33</sup>

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29. See, e.g., *Bolen v. Humes*, 114 N.E.2d 281, 283–84 (Oh. Ct. App. 1951) (awarding the fiancée possession of the ring based on the irrevocability of the gift); *Chipman's Adm'r v. Gerlach*, 150 S.W.2d 633, 634–35 (Ky. Ct. App. 1941) (using traditional gift law to discuss the validity of the delivery of an engagement ring that had been given to deceased's betrothed). See also CAL. CIV. CODE § 1590 (West 2014) (stating that a gift given "on the basis or assumption that the marriage will take place" must be returned "in the event that the donee refuses to enter into the marriage as contemplated").

30. See *supra* note 18 and accompanying text (discussing multiple cases in which fault was used to determine which party was entitled to the engagement ring and awarding the donee the ring unless she had explicitly ended the engagement). See also CAL. CIV. CODE § 1590 (codifying the idea that a donee's fault may require the return of the engagement ring); *Schultz v. Duitz*, 69 S.W.2d 27, 30 (Ky. Ct. App. 1934) (allowing the donee to keep the engagement ring because she was not at fault in terminating the engagement).

31. See, e.g., *Bolen*, 114 N.E.2d at 284–85 ("[A] completed gift *inter vivos* is irrevocable by the donor.").

32. *Greene v. Greene*, 92 A.D.3d 838, 839 (N.Y. App. Div. 2012) (internal quotation marks omitted) (quoting *Ross v. Ross Metals Corp.*, 87 A.D.3d 573, 575) (N.Y. App. Div. 2011); see also *Albinger*, 48 P.3d at 718 ("The essential elements of an *inter vivos* gift are donative intent, voluntary delivery and acceptance by the recipient." (citing *Marans v. Newland*, 374 P.2d 721, 724 (Mont. 1962))).

33. See *Coppola v. Farina*, 910 A.2d 1011, 1014–15 (Conn. Super. Ct. 2006) (quoting *Pappas v. Pappas*, 386 S.E.2d 301, 303 (S.C. Ct. App. 1989) ("Rarely will the donor's intent be clearly

During the early-twentieth century, most disputes involving premarital property were handled through breach-of-promise to marry suits.<sup>34</sup> Due to shifting societal views regarding marriage and a woman's role within the context of a marriage, many thought these causes of action were outdated, and most states soon abolished them.<sup>35</sup> The state legislation that prohibited breach-of-promise suits became collectively known as "Heartbalm Acts," which changed the landscape for how to resolve issues of broken engagements.<sup>36</sup> While these heartbalm acts barred a suit for damages based on a breach of promise to marry, they did not bar an action for the recovery in replevin of a gift given in anticipation of marriage.<sup>37</sup> The feminist movement also helped shape the change because increased entry into the workplace meant that women could make their own living without needing a husband.<sup>38</sup> These factors combined to modernize

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established. The family court is then reduced to deciding the question on the credibility of the parties unless an additional rule is adopted.")).

34. See Brian L. Kruckenburg, Comment, *"I Don't": Determining Ownership of the Engagement Ring When the Engagement Terminates*, 37 WASHBURN L.J. 425, 428 (1998) (footnote omitted). See also *supra* note 19 and accompanying text (listing breach-of-promise suits).

35. See Kruckenburg, *supra* note 34, at 428–29; Neil G. Williams, *What to Do When There's No "I Do": A Model for Awarding Damages Under Promissory Estoppel*, 70 WASH. L. REV. 1019, 1031–32 (1995) ("The criticisms of the breach-of-promise action fueled the legislative reform movement that led to the adoption of heartbalm statutes in some American jurisdictions."); Tushnet, *supra* note 15, at 2586 ("From the 1930s through the 1950s, a wave of antiheartbalm proposals swept the United States. Responding to charges that [breach-of-promise] actions enabled designing women to blackmail worthy men, legislators in many states passed statutes eliminating breach-of-promise and related actions.").

36. See HOMER H. CLARK, JR., 1 THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES § 1.5, at 21–23 (2d ed. 1987). See also Kruckenburg, *supra* note 34, at 429 n.31 ("As of 1997, twenty-one states still have "Heart-Balm" statutes in effect . . .").

37. See *Piccininni v. Hajus*, 429 A.2d 886, 888 (Conn. 1980) (stating that the majority rule holds that "the existence of a Heart Balm Act does not affect common law principles governing a gift to a fiancée [sic] made on condition of marriage, which condition is broken by the donee"); *Vann v. Vehrs*, 633 N.E.2d 102, 104 (Ill. App. Ct. 1994) (concluding that the majority of courts state that because a suit for the return of premarital property is not a suit for breach of promise to marry, "[Heartbalm] statutes do not apply to replevin actions for the recovery of property transferred in contemplation of marriage"); *Gikas v. Nicholis*, 71 A.2d 785, 786 (N.H. 1950) ("It was not the intention of the . . . [l]egislature in outlawing breach of promise suits to permit the unjust enrichment of persons to whom property had been transferred . . . . To so construe the statute would be to permit the unjust enrichment which the statute [was] designed to prevent."); *Lampus v. Lampus*, 660 A.2d 1308, 1310 (Pa. 1995) (holding that heartbalm acts do not eliminate suits in replevin to recover premarital property when the marriage does not occur, but only abolished causes of action for the breach of the actual promise to marry).

38. See LLOYD T. KELSO, 1 N.C. FAMILY LAW PRACTICE § 2:17 (West 2014) ("The entry of women into employment markets formerly occupied only by men meant that women were no longer defined exclusively by domestic roles. . . . As a result of these changes in laws and social attitudes, victims of broken promises of marriage no longer suffered the same economic and societal costs as did engaged women of an earlier time.").

courts' views when resolving property disputes in broken engagement suits, sparking the increased use of the conditional gift theory.<sup>39</sup>

## 2. *The Engagement Ring as a Conditional Gift*

As breach of promise to marry laws became passé, so too did the courts' inclination to regard engagement rings in the same light as other gifts.<sup>40</sup> In the emerging trend, a court regarded an engagement ring as a conditional gift because this approach more appropriately represented the true intent of the donor at the time he bestowed the "gift" on the donee.<sup>41</sup> The added element required to declare a gift conditional, as opposed to *inter vivos*, was that the gift was given *under the condition* that an event was to occur, and if the event did not actually materialize, the gift was revocable.<sup>42</sup> In engagement ring suits, this condition

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39. See, e.g., Pavlicic v. Vogtsberger, 136 A.2d 127, 130 (Pa. 1957) (ruling that heartbalm acts left conditional gift theory intact because "[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"). See also Tushnet, *supra* note 15, at 2592–93 (describing effects that the heartbalm reforms and change in societal gender norms had on growing conditional gift theory).

40. See Kruckenbug, *supra* note 34, at 428 ("At the beginning of this century, the attitudes toward engagement began changing, and as a result, the breach of promise to marry action became the object of harsh criticism."). See also Tushnet, *supra* note 15, at 2592–93, 2599–2607 (analyzing the rise of the conditional gift theory in premarital engagement suits). After examining the evolution of premarital property suits in the United States, one scholar reasoned that the recent trend for courts to utilize a no-fault approach generated from "the theory that a ring is given conditioned on marriage and that it has to be returned if the marriage fails to materialize." *Id.* This condition allegedly distinguishes engagement rings from other gifts shared between romantic partners. *Id.*

41. See Brown v. Thomas, 379 N.W.2d 868, 872–73 (Wis. Ct. App. 1985). While discussing the difference between an *inter vivos* gift and a conditional gift, this court stated:

Where a gift of personal property is made with the intent to take effect irrevocably, and is fully executed by unconditional delivery, it is a valid gift *inter vivos*. Such a gift is absolute and, once made, cannot be revoked. A gift, however, may be conditioned on the performance of some act by the donee, and if the condition is not fulfilled the donor may recover the gift. We find the conditional gift theory particularly appropriate when the contested property is an engagement ring.

*Id.* at 872 (citations omitted).

42. See 38 AM. JUR. 2D Gifts § 68 (2010) (providing the understanding of conditional gift theory from the viewpoint of premarital property). Case law also supports the assertion that engagement rings inherently represent a conditional gift. Meyer v. Mitnick, 625 N.W.2d 136, 139 (Mich. Ct. App. 2001) ("[W]e find that engagement rings should be considered, by their very nature, conditional gifts given in contemplation of marriage."); Aronow v. Silver, 538 A.2d 851, 852 (N.J. Super. Ct. Ch. Div. 1987) (describing the engagement ring as a conditional gift despite the absence of an express condition); McIntire v. Raukhorst, 585 N.E.2d 456, 457–58 (Ohio Ct. App. 1989) (basing the belief that engagement rings qualify as conditional gifts on their "symbolic significance"); Lindh v. Surman, 742 A.2d 643, 644 (Pa. 1999) ("Pennsylvania law treats the giving of an engagement ring as a conditional gift." (citing Pavlicic v. Vogtsberger, 136 A.2d 127 (Pa. 1957))).

was the marriage's actual occurrence.<sup>43</sup> Some courts have decided that the giving of an engagement ring has "an implied condition that the marriage must occur in order [for property rights in the ring] to vest in the donee; mere acceptance of the marriage proposal [cannot be] the implied condition for the gift."<sup>44</sup> This approach, which uses contract law to provide a basis for viewing engagement rings as conditional gifts, is in accordance with both existing law and the donor's intent.<sup>45</sup>

Furthermore, this approach separates the revocability of gifts traditionally given in anticipation of marriage, such as an engagement ring, from gifts that do not necessarily condition themselves on the marriage occurring, such as buying a home.<sup>46</sup> This approach also distinguishes the revocability of the gift based on *when* it was given.<sup>47</sup> Courts have held that an engagement ring given on Christmas or a birthday is an irrevocable gift, not one conditioned upon marriage, as the donor more likely intended those as "personal gratuities."<sup>48</sup>

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43. See *Harris v. Davis*, 478 N.E.2d 1204, 1206 (Ill. App. Ct. 1986) (citing *Rockafellow v. Newcomb*, 57 Ill. 186, 191–92 (Ill. 1870) ("[A] gift given in contemplation of marriage is deemed to be conditional on the subsequent marriage of the parties."); *Cooper v. Smith*, 800 N.E.2d 372, 378 (Ohio Ct. App. 2003) (adopting the conditional gift theory with regard to engagement rings in Ohio because the approach "implies a condition on the gift of the engagement ring only, [and] is the best approach"); see also *Lewis v. Permut*, 320 N.Y.S.2d 408, 410 (N.Y. Civ. Ct. 1971) ("Such a gift was predicated upon the parties entering into marriage . . . . Since this did not happen, despite who broke off the engagement, the court cannot see any logic in allowing the defendant to retain such unhappy souvenirs of an event which was never consummated.").

44. *Lindh*, 742 A.2d at 645.

45. See RESTATEMENT (SECOND) OF CONTRACTS § 332 (1981) ("An assignment is gratuitous unless it is given or taken . . . in exchange for a performance or return promise that would be consideration for a promise . . ."). Therefore, the Restatement understood the equitable need for the revocability of a conditional gift, or one given in exchange for a condition occurring, such as marriage. *Id.* at cmt. a.

46. See *Lewis*, 320 N.Y.S.2d at 411 (holding that a gold pocket watch and chain given by the defendant to the plaintiff was irrevocable when their engagement ended because "these items of jewelry are not of the same ilk as an engagement ring, which is the accepted and traditional symbol between a man and a woman of their intention to marry"); see also *Cooper*, 800 N.E.2d at 378–79 (deciding that the law dictated the return of the engagement ring, but not the other pre-marital property). In *Cooper*, the plaintiff sought the return of an engagement ring and other "gifts" he had given to his fiancée during their engagement, such as construction on her mother's house. *Id.* at 374. The court held that the plaintiff was entitled to the engagement ring's return because the ring came with an implied condition that the marriage was going to occur. *Id.* at 378. However, the court concluded that the plaintiff was not entitled to any other gifts he had given his fiancée because "[u]nlike the engagement ring, the other gifts have no symbolic meaning. Rather, they are merely 'token[s] of the love and affection which [the donor] bore for the [donee].'" *Id.* at 378–79 (alteration in original) (quoting *Albanese v. Indelicato*, 51 A.2d 110, 110 (Dist. Ct. N.J. 1947)).

47. See, e.g., *Gikas v. Nicholis*, 71 A.2d 785, 786 (N.H. 1950) (holding that the gifts plaintiff had given to his ex-fiancée were "personal gratuities" that were "more nearly akin to a Christmas present" than a gift with an implied condition, such as the engagement ring).

48. See *Gikas*, 71 A.2d at 786. See also N.Y. DOM. REL. LAW § 4:4 ("If there were reasons other than a contemplated marriage why the gift was given, such as part of a birthday or holiday celebration, the ring may not be subject to return.").

*B. Modern Courts Utilize Three Approaches to Determine Cases Involving the Return of Engagement Rings*

*1. The Fault Approach*

A minority of states, including California,<sup>49</sup> Missouri,<sup>50</sup> and Texas,<sup>51</sup> allow fault to factor into the analysis when determining which party receives the engagement ring after a failed engagement.<sup>52</sup> The hallmark of the fault approach is the thorough examination of the particular case's facts to determine which party was at fault, or *more* at fault, in the engagement's termination.<sup>53</sup> This methodology aims to consider the facts of each case individually, a time-consuming approach that often results in a court's analysis of parties' personal lives.<sup>54</sup>

Although New Jersey now follows a no-fault approach,<sup>55</sup> for decades it applied the fault approach first announced in the 1948 case *Mate v. Abrahams*.<sup>56</sup> The court in *Mate* argued:

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49. See e.g., *Stienback v. Halsey*, 251 P.2d 1008, 1010–12 (Cal. Dist. Ct. App. 1953) (discussing CAL. CIV. CODE § 1590 and concluding that defendant was not entitled to keep her engagement ring because, even though she agreed to marry plaintiff, the facts showed she only agreed to do so to accumulate property and their engagement ended the plaintiff realized this information); see also CAL. CIV. CODE § 1590 (West 2014) (“Where either party to a contemplated marriage in this State makes a gift of money or property to the other on the basis or assumption that the marriage will take place, in the event that the donee refuses to enter into the marriage as contemplated . . . the donor may recover such gift . . . as may, under all of the circumstances of the case, be found by a court or jury to be just.”).

50. See *Clippard v. Pfefferkorn*, 168 S.W.3d 616, 620 (Mo. Ct. App. 2005) (holding that the woman was entitled to keep the engagement ring after her fiancé broke off the engagement due to no fault of her own).

51. See *Curtis v. Anderson*, 106 S.W.3d 251, 256 (Tex. Ct. App. 2003) (finding that assessing fault for both parties in conjunction with the conditional-gift rule allowed the donee to keep the engagement ring when the donor terminated the engagement).

52. See *supra* notes 50–51 (showing courts' analyses of the minority approach).

53. See *supra* note 25.

54. See *Kosco v. Giacone*, No. 5-12-0483, 2013 WL 4041043, at \*1–4 (Ill. App. Ct. Aug. 8, 2013) (examining personal details of the parties' lives, such as behavior during phone calls, arguments about engagement photos, and the intimate details about past breakups). It is often clear that a state follows a fault approach based on the length of the opinions in broken-engagement suits because the courts must analyze and interpret a multitude of facts. See *Thorndike v. Demirs*, No. CV055000243S, 2007 WL 2363411, at \*1 (Conn. Super. Ct. July 26, 2007) (acknowledging the vehement discord and disagreement between the parties' testimony regarding the facts in this case, but due to the inherent importance in determining which party was the credible party, the court gave “considerable attention to the respective testimony of the parties”).

55. See *Aronow v. Silver*, 538 A.2d 851, 852 (N.J. Super. Ct. Ch. Div. 1987) (concluding that New Jersey should join the handful of states that followed a no-fault approach at the time of the opinion).

56. 62 A.2d 754 (N.J. Essex County Ct. 1948); see also *Aronow*, 538 A.2d, at 852–53 (discussing *Mate*'s introduction of the fault rule and transitioning from the long-standing rule to a no-fault approach).

On principle, an engagement ring is given, not alone as a symbol of the status of the two persons as engaged, the one to the other, but as a symbol or token of their pledge and agreement to marry. As such pledge or gift, the condition is implied that if both parties abandon the projected marriage, the sole cause of the gift, it should be returned. Similarly, if the woman, who has received the ring in token of her promise, unjustifiably breaks her promise, it should be returned.

When the converse situation occurs, and the giver of the ring, betokening his promise, violates his word, it would seem that a similar result should follow, i.e., he should lose, not gain, rights to the ring.<sup>57</sup>

Courts in New Jersey continued to follow the fault approach until 1987, when it transitioned to a no-fault approach established in the case *Aronow v. Silver*.<sup>58</sup>

Similar to New Jersey, Connecticut had considered fault in its analysis of engagement ring disputes prior to its later transition to the no-fault approach.<sup>59</sup> The 1964 case *White v. Finch*<sup>60</sup> highlights Connecticut's traditional fault approach analysis.<sup>61</sup> In *White*, plaintiff proposed to defendant the day before Valentine's Day, and gave her a diamond ring one week later.<sup>62</sup> Within a few months, the relationship turned sour and the engagement ended, and both parties disagreed on the reasons behind the failed engagement.<sup>63</sup>

The court engaged in a detailed analysis of the facts of the case to determine which party was at fault in the engagement's termination.<sup>64</sup> Ultimately, the court determined that the plaintiff formally ended the engagement, which entitled the defendant to keep the engagement ring.<sup>65</sup> The court based its inclusion of the fault analysis on both Roman and English law, which emphasized the fault of each party when resolving a dispute concerning the return of premarital

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57. *Mate*, 62 A.2d at 754–55 (providing further rationale for this approach by asking “[h]ow, on principle, can the courts aid [the potential groom], under such circumstances, to regain a ring which he could not regain, had he kept his promise? ‘No man should take advantage of his own wrong’”).

58. 538 A.2d 851, 854 (N.J. Super. Ct. Ch. Div. 1987) (abolishing fault in the analysis used for New Jersey cases that handle broken engagements).

59. Compare *White v. Finch*, 209 A.2d 199, 201 (Conn. Cir. Ct. 1964) (holding that the plaintiff's calling off the wedding entitled the defendant to keep the engagement ring because “it has been held that where an engagement [was] broken owing to the fault of the donor he [could] not recover the ring”), with *Thorndike*, 2007 WL 2363411, at \*11 (“We find [the ‘no-fault’] approach to be more persuasive” and “consistent with [Connecticut’s] ‘no-fault’ system of divorce.”).

60. 209 A.2d 199 (Conn. Cir. Ct. 1964).

61. *Id.* at 201.

62. *Id.* at 200 (noting that the plaintiff had also proposed prior to Christmas, but the defendant had turned him down, saying that she “wanted ‘to think it over’”).

63. *Id.* at 200–01.

64. *Id.*

65. *Id.* at 201 (“Whatever words were spoken and whatever action was taken to terminate the engagement were spoken and taken by the plaintiff.”).

property.<sup>66</sup> Consequently, the court held that the weight of the evidence and credibility tipped in favor of the defendant, allowing her to keep the ring because it was her ex-fiancé's fault that the marriage did not occur.<sup>67</sup>

Unlike courts in Connecticut and New Jersey, Missouri courts continue to use fault analysis in their determination of the division of premarital property.<sup>68</sup> *Clippard v. Pfefferkorn*,<sup>69</sup> a 2005 case before the Missouri Court of Appeals, serves as a recent example of a Missouri court utilizing the fault approach in the engagement ring arena.<sup>70</sup> In *Pfefferkorn*, Clippard and Pfefferkorn dated for four to five months before Clippard proposed to Pfefferkorn two days prior to Christmas with a diamond ring worth \$13,500.<sup>71</sup> Clippard ended the engagement six weeks later, believing that his fiancée was not the right person for him, but Pfefferkorn refused to return the ring.<sup>72</sup> Clippard filed suit, but the court held that Pfefferkorn was entitled to keep the ring because the engagement ended due to no fault of her own.<sup>73</sup> *Pfefferkorn* stands as a rare case where the court expressly asserted that Missouri uses a fault-based approach and then followed the corresponding methodology, compared to courts in other states that simply analyze the facts to determine which party was at fault without stating the test to be used.<sup>74</sup>

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66. *See id.* (“The prevailing view in the United States and England follows the Roman Law in placing weight upon the fault of the parties.”). *See also* *Schultz v. Duitz*, 69 S.W.2d 27, 30 (Ky. 1934) (discussing ancient case law and modern English law to find “without precedent of authority, a sense of right, fair play, and justice forbids [the court]” from giving the ring back to the donor when the donor ended the engagement).

67. *White*, 209 A.2d at 201 (“No words could have been more distinct, more unequivocal than the plaintiff’s: ‘As far as I am concerned, the engagement is through.’”).

68. *See Clippard v. Pfefferkorn*, 168 S.W.3d 616, 619–20 (Mo. Ct. App. 2005) (holding that a fiancée was entitled to keep her engagement ring and expressly reiterating that “[i]n cases concerning gifts made in contemplation of marriage, Missouri courts have utilized a fault-based approach when applying the conditional gift rule to determine which party is entitled to the property”).

69. 168 S.W.3d 616 (Mo. Ct. App. 2005).

70. *Id.* at 619.

71. *Id.* at 617.

72. *Id.*

73. *Id.* at 616, 620. The court also noted that the “[p]laintiff breached his promise to marry” his fiancée by ending his engagement to her. *Id.* at 620. This fact benefitted the defendant’s case because, if the plaintiff “had not breached his promise,” but, instead, married the defendant, she would surely “have been entitled to retain the ring as her own non-marital property.” *Id.*

74. *Id.* at 620 (“[W]e hold that in light of . . . Missouri’s fault-based approach to the recovery of or retaining of conditional gifts made in contemplation of marriage, [the donee] is entitled to retain the ring.”). The *Pfefferkorn* court also analyzed the fact that the ring was given so close to Christmas, but, ultimately, found it was given solely as an engagement ring. *Id.*

Illinois has consistently taken a fault approach when determining the division of premarital property.<sup>75</sup> In *Kosco v. Giacone*,<sup>76</sup> a recent Illinois Appellate Court case, the court effectively highlighted its application.<sup>77</sup> The plaintiff, Paul Kosco, attempted to recover the engagement ring he had given to his ex-fiancée, Cynthia Giacone, by filing an action in replevin against her.<sup>78</sup> Giacone testified that she and Kosco had gone shopping for engagement rings and talked about getting married prior to Kosco's proposal on Christmas Eve in 2010.<sup>79</sup> Kosco and Giacone ended their engagement by August 2011, but conflicting testimony existed as to which party officially called it off.<sup>80</sup>

Giacone argued that she was entitled to keep the ring because it was a combined birthday and Christmas gift and they had both decided to end the engagement.<sup>81</sup> Kosco testified that he was entitled to receive the ring because Giacone was the party who ended the engagement and Kosco had intended the gift purely for engagement purposes, as evidenced when he "got down on one knee and proposed."<sup>82</sup>

*Kosco* serves as a prime example of the difficult determinations that courts face when utilizing a fault-based approach. The Illinois Court of Appeals, handcuffed by its fault-based inquiry, was forced to wade through a plethora of conflicting testimony to reach a final conclusion.<sup>83</sup> Ultimately, the court held that the weight of the evidence suggested that Kosco intended the ring to be an engagement ring, not a dual-purpose ring, and that Giacone was seemingly more

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75. See, e.g., *Kosco v. Giacone*, No. 5-12-0483, 2013 WL 4041043, at \*1 (Ill. App. Ct. Aug. 8, 2013) (holding that "[t]he trial court's determination that the plaintiff was entitled to the return of an engagement ring was not against the manifest weight of the evidence where there was sufficient evidence to support a finding that the defendant broke the engagement and wrongfully detained the ring."); *Harris v. Davis*, 487 N.E.2d 1204, 1206 (Ill. App. Ct. 1986) (ruling that an ex-fiancée must return the engagement ring to the donor because she ended the engagement and stating that "the party who fails to perform on the condition of the gift has no right to property acquired under such pretenses"). But see *Vann v. Vehrs*, 633 N.E.2d 102, 106 (Ill. App. Ct. 1994) (holding that the donor was entitled to the engagement ring because neither party was at fault in the engagement's termination).

76. No. 5-12-0483, 2013 WL 4041043 (Ill. App. Ct. 2013).

77. *Id.* at \*9 (holding that the defendant had to return the engagement ring to the plaintiff because the weight of the evidence supported the finding that she had broken off the engagement).

78. *Id.* at \*1.

79. *Id.*

80. *Id.* at \*2, 4–5.

81. *Id.* at \*2, \*6–7. While Giacone testified that Kosco gave her the ring as a "combined [ ] birthday and Christmas gift," Kosco testified that this was impossible because her birthday was in April. *Id.* at \*2.

82. *Id.* at \*6. The court stated that even if the proposal was made on Christmas Eve, "[i]t is not the occasion on which the ring [was] given that determine[d] whether the ring [was] an engagement ring or a gift, it [was] whether the ring [was] given in contemplation of marriage." *Id.*

83. See *id.* at \*5–9 (basing the courts determination on a very fact-dependent analysis).

at fault than Kosco in the engagement's termination.<sup>84</sup> Therefore, the court affirmed the lower court's order that granted the ring to Kosco.<sup>85</sup>

These cases highlight both the successes and failures of the fault-based approach.<sup>86</sup> However, many state courts have shifted to a no-fault approach, in an attempt to correct some of the problems inherent with a fault analysis.<sup>87</sup>

## 2. The No-Fault Approach in Favor of the Donor

The no-fault approach in favor of the engagement ring's donor has become the majority rule in U.S. jurisdictions.<sup>88</sup> Many states that traditionally used a fault-based analysis have shifted to using a no-fault methodology<sup>89</sup> to counter the weaknesses of the fault approach, such as its unpredictability, lack of ease of understanding, and its invasion into personal relationships.<sup>90</sup> The idea that fault can be ascertained in the arena of broken engagements has been heavily criticized by many states, and a rule stating that the engagement ring is returned to the donor in all instances resolves this concern for the court.<sup>91</sup> Further, the fault approach has been critiqued as "sexist and . . . a too-long enduring reminder of the times when even the law discriminated against women."<sup>92</sup> Finally, the rise of no-fault divorces led to an increase in no-fault approaches to broken

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84. *Id.* at \*9.

85. *Id.*

86. *See infra* Part II.

87. *See infra* notes 92–98 and accompanying text (listing the states currently using a no-fault approach to resolving engagement ring disputes).

88. *See* Aronow v. Silver, 538 A.2d 851, 853 (N.J. Super. Ct. Ch. Div. 1987) (describing the fault-based rule for determining the party who is entitled to the engagement ring as "archaic"); *see also* Vigil v. Haber, 888 P.2d 455, 457 (N.M. 1994) ("Following a modern trend, legislatures and courts have moved toward a policy that removes fault-finding from the personal-relationship dynamics of marriage and divorce."); Crippen v. Campbell, No. E2007-00309-COA-R3-CV, 2007 WL 2768076, at \*1–2 (Tenn. Ct. App. Sept. 24, 2007) (rejecting the trial court's assessment of the engagement ring as an irrevocable gift because "cases from other jurisdictions persuade[d] [the court] that the clear weight of authority in this country [was] contrary [to that ruling]"); Cotter, *supra* note 24, at 151 ("There are a growing number of jurisdictions that have adopted the no-fault rule in recent years, enough so that the no-fault rule can lay claim to now being the majority rule.").

89. *See, e.g.,* Gaden v. Gaden, 272 N.E.2d 471, 475–76 (N.Y. 1971) ("Just as the question of fault or guilt has become largely irrelevant to modern divorce proceedings, so should it also be deemed irrelevant to the breaking of the engagement." (citation omitted)).

90. *See infra* Part II (describing and providing examples of the fault approach's weaknesses).

91. *See, e.g.,* Fierro v. Hoel, 465 N.W.2d 669, 672 (Iowa Ct. App. 1990) (holding that an engagement ring was inherently conditional on the impending marriage, and, therefore, a fault approach failed on a fundamental level because "[i]f the wedding [was] called off, for whatever reason, the gift [was] not capable of becoming a completed gift and [needed to] be returned to the donor"); Aronow, 538 A.2d at 853 (ruling that "fault, in an engagement setting, cannot be ascertained").

92. *Id.* (discussing the history of the fault rule as a sexist one, as the fault was always the woman's and recognizing the inherent difficulties in determining who is at fault when an engagement is broken).

engagements.<sup>93</sup> These factors have culminated in the modern trend that favors a no-fault approach, currently followed by states such as Iowa,<sup>94</sup> Kansas,<sup>95</sup> Michigan,<sup>96</sup> Minnesota,<sup>97</sup> New Jersey,<sup>98</sup> New York,<sup>99</sup> Ohio,<sup>100</sup> Pennsylvania,<sup>101</sup> South Carolina,<sup>102</sup> and Wisconsin.<sup>103</sup>

In 1957, Pennsylvania became one of the first states to adopt a no-fault rule in *Pavlicic v. Vogtsberger*.<sup>104</sup> While not explicitly establishing a no-fault approach, this oft-cited case laid the foundation for states to follow by using the

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93. See *Lindh v. Surman*, 742 A.2d 643, 646 (Pa. 1999) (“Courts that have applied no-fault principles to engagement ring cases have borrowed from the policies of their respective legislatures that have moved away from the notion of fault in their divorce statutes.” (citing *Vigil*, 888 P.2d at 455; *Aronow*, 538 A.2d at 854)).

94. See *Fierro*, 465 N.W.2d at 671–72 (analyzing the various flaws in the fault approach and concluding a no-fault approach provides a better test to resolve which party keeps the engagement ring).

95. See *Heiman v. Parrish*, 942 P.2d 631, 637–38 (Kan. 1997) (differentiating engagement suits from divorce suits in the state, and holding that fault was not a determinate factor when analyzing the proper owner of an engagement ring).

96. See *Meyer v. Mitnick*, 625 N.W.2d 136, 139 (Mich. Ct. App. 2001) (finding the “reasoning of the no-fault cases persuasive,” and holding the donor of ring was entitled to recover it from his ex-fiancée).

97. See *Benassi v. Back & Neck Pain Clinic, Inc.*, 629 N.W.2d 475, 486 (Minn. Ct. App. 2001) (“We conclude that because the Minnesota legislature has adopted a no-fault marriage dissolution law on the grounds of public policy . . . it is consistent for th[e] court to adopt a no-fault approach to the return of an engagement ring.”).

98. See *Aronow*, 538 A.2d at 854 (recognizing that New Jersey law dictates a no-fault approach with regards to both engagements and divorce).

99. See *Lipschutz v. Kiderman*, 76 A.D.3d 178, 183 (N.Y. App. Div. 2010) (stating that the New York legislature passed a law that expressly mandated that the adjudication of engagement property disputes be resolved without taking into account “who [was] responsible for the failure of the marriage to go forward”) (citing *Gaden v. Gaden*, 272 N.E.2d 471, 476 (N.Y. 1971); *Gagliardo v. Clemente*, 580 N.Y.S.2d 278 (N.Y. App. Div. 1992)).

100. See *McIntire v. Raukhorst*, 585 N.E.2d 456, 457–58 (Ohio Ct. App. 1989) (rejecting the traditional fault approach in favor of the conditional gift theory, and awarded the ring to the donor even though he ended the engagement because the condition of marriage had not been fulfilled).

101. See *Lindh v. Surman*, 742 A.2d 643, 647 (Pa. 1999) (holding that donor of engagement ring was required to recover the ring under a no-fault approach and that a strict no-fault approach must be followed).

102. *Campbell v. Robinson*, 726 S.E.2d 221, 226 (S.C. Ct. App. 2012) (holding the fault approach inapplicable to finding the rightful owner of an engagement ring because no legal standard (i.e., the reasonable person) of behavior exists to determine the party at fault).

103. See *Brown v. Thomas*, 379 N.W.2d 868, 873 (Wis. Ct. App. 1985) (“[W]e conclude that the public policy embodied in Wisconsin’s no-fault law applies to actions for recovery of gifts conditioned on marriage. Thus, an inquiry as to how the engagement was dissolved is not necessary . . .”).

104. 136 A.2d 127 (Pa. 1957).

conditional gift approach as a tool to negate fault as a factor in a court's analysis.<sup>105</sup> In *Pavlicic*, Justice Musmanno eloquently stated this proposition:

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 refuses to sail with the donor, but, on the contrary, walks up the gangplank of another ship arm in arm with the donor's rival.<sup>106</sup>

This court realized the inherent predicament with using the fault approach in resolving broken engagement property disputes that centered on engagement rings—the fact that the gift was *conditional on the assumption* that the marriage occur.<sup>107</sup> Therefore, fault remained a non-issue because the gift in question was not complete if the marriage did not occur.<sup>108</sup> Subsequent courts agreed that there was no room for fault analysis in this legal landscape.<sup>109</sup>

New York followed Pennsylvania's lead in 1971 with regard to pre-marital property, utilizing the no-fault approach in *Gaden v. Gaden*.<sup>110</sup> The *Gaden* court established a no-fault policy for New York to follow, stating that “the initial intent of the heart balm legislation was to rid the courts of these actions where the ‘wounded’ party appear[ed] in court to unfold his or her sorrows before a sympathetic jury.”<sup>111</sup> Despite the case centering on land acquired during an

105. *Id.* at 130–32 (differentiating between actions to recover damages for a broken heart and actions to recover property from a broken engagement to allow conditional gift theory to guide the legal analysis for the latter).

106. *Id.* at 130.

107. *Id.* at 131–32.

108. *Id.* at 131 (stating that the plaintiff was not suing because of a “broken heart,” but asking for items back which he gave with a condition of marriage that never materialized).

109. See *Thorndike v. Demirs*, No. CV055000243S, 2007 WL 2363411, at \*10 (Conn. Super. Ct. July 26, 2007) (“[T]his court is convinced that the modern no-fault rule is clearly the better rule and comports with the modern trends on handling family matters on a no fault basis.”); *Fierro v. Hoel*, 465 N.W.2d 669, 672 (Iowa Ct. App. 1990) (explicitly declining to analyze why the engagement was broken); *Aronow v. Silver*, 538 A.2d 851, 854 (N.J. Super. Ct. Ch. Div. 1987) (“When the promise of marriage was not kept, regardless of fault . . . the ring must be returned to [the donor].”).

110. 272 N.E.2d 471 (N.Y. 1971).

111. *Id.* at 476. The *Gaden* court used public policy methodology to criticize the fault approach by contrasting the penalty the fault approach imposed on a party for ending an engagement with the purpose of the engagement period to establish “the permanency” of two parties’ feelings for each other. *Id.* According to the court, “it would seem highly ironic to penalize the donor for taking steps to prevent a possibly unhappy marriage.” *Id.* The court summarized one of the main failures of the fault approach, concluding that New York courts “should not impose a fault requirement . . . which would only burden our courts with countless tales of broken hearts and frustrated dreams.” *Id.* (footnote omitted).

engagement rather than an engagement ring, the court utilized the legal standard from divorce proceedings to solidify the presence of the no-fault approach in New York jurisprudence.<sup>112</sup>

In 1985, Wisconsin followed Pennsylvania and New York, instituting a no-fault policy in *Brown v. Thomas*.<sup>113</sup> In *Brown*, the court analogized Wisconsin divorce law to the engagement setting and concluded that “the public policy embodied in Wisconsin’s no-fault divorce law applie[d] to actions for recovery of gifts conditioned on marriage.”<sup>114</sup> Therefore, the court decided that an inquiry into the fault of the parties in the terminated engagement was unnecessary.<sup>115</sup>

In 1997, Kansas also came down in favor of a no-fault policy, as seen in *Heiman v. Parrish*.<sup>116</sup> The undisputed facts indicated that Heiman purchased a ring for Parrish and gave it to her “in contemplation of marriage.”<sup>117</sup> Heiman terminated the engagement, but the parties could not agree on who was to blame.<sup>118</sup> The court concluded that the no-fault case law was convincing, thus Heiman was entitled to the ring because fault was irrelevant in the analysis over its ownership.<sup>119</sup>

Recently, South Carolina also established a no-fault approach in favor of the donor of the engagement ring. The Court of Appeals of South Carolina decided *Campbell v. Robinson*<sup>120</sup> in 2012, holding that “fault does not determine ownership of the [engagement] ring.”<sup>121</sup> In *Campbell*, the parties disputed who ended the engagement, and the donee testified the donor had told her “she should

112. *Id.* at 473, 476.

113. 379 N.W.2d 868, 873 (Wis. Ct. App. 1985).

114. *Id.* (citation omitted).

115. *See id.* (“As the record of this two-day jury trial demonstrates, the answer to the multiple question ‘who broke off the engagement, when, and was he/she justified?’ is often lost in the murky depths of contradictory, acrimonious, and largely irrelevant testimony by disappointed couples, their relatives and friends.”). The *Brown* court decided the rule set out in *Gaden* was more equitable and realistic. *Id.*

116. 942 P.2d 631, 632 (Kan. 1997) (holding that fault is irrelevant in determining the rightful owner of an engagement ring).

117. *Id.* at 632.

118. *Id.*

119. *Id.* at 637–38. The court in *Heiman* cites nine instances where an engagement may justifiably fail, illustrating the impossibility of determining fault where none may exist:

(1) The parties have nothing in common; (2) one party cannot stand prospective in-laws; (3) a minor child of one of the parties is hostile to and will not accept the other party; (4) an adult child of one of the parties will not accept the other party; (5) the parties’ pets do not get along; (6) a party was too hasty in proposing or accepting the proposal; (7) the engagement was a rebound situation which is now regretted; (8) one party has untidy habits that irritate the other; or (9) the parties’ have religious differences.

*Id.*

120. 726 S.E.2d 221 (S.C. Ct. App. 2012).

121. *See id.* at 225. Ultimately, the court remanded the case for a new trial because the jury had been instructed to consider fault and had found the donor at fault. *Id.* at 224–26, 229.

keep the ring” but later reneged on his statement.<sup>122</sup> The court stated “the consideration of fault has no place in determining ownership of an engagement ring. Generally, gift law will dictate who has the legal right to the ring.”<sup>123</sup> The Campbell court wrote that an engagement ring inherently represents a symbol of the donor’s love and “devotion to the donee,” but that sentiment is not of legal consequence when an engagement ends.<sup>124</sup> These cases illustrate the reasons behind the rapid movement towards a majority no-fault approach in the United States, but an outlier state that favors a no-fault methodology in favor of the party who received the engagement ring still remains.<sup>125</sup>

### 3. *The No-Fault Approach in Favor of the Donee*

Currently, only Montana follows the no-fault approach in favor of the donee when determining which party receives the ring following a broken engagement.<sup>126</sup> On a case of first impression in 2012, the Montana Supreme Court concluded in *Albinger v. Harris*<sup>127</sup> that an engagement ring is an irrevocable *inter vivos* gift by nature and that the donee is entitled to the ring regardless of fault.<sup>128</sup>

To reach this conclusion, the court analyzed the giving of an engagement ring using “[t]he essential elements of an *inter vivos* gift[—]donative intent, voluntary delivery[,], and acceptance by the recipient”—and found each of these elements present when a man gives an engagement ring to his betrothed in anticipation of marriage.<sup>129</sup> The court applied contract law to rationalize its ultimate conclusion, finding the promise to marry and the exchange of a ring as sufficient consideration to form a binding contract.<sup>130</sup> The court also reasoned

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122. *Id.* at 224.

123. *Id.* at 226. The court listed four factors that helped advance the no-fault approach: “the abolishment of heart balm actions, adoption of no-fault divorce, desire to limit courtroom dramatics, and reduction of the difficulty in determining the issue of what constitutes fault in the decline of a relationship.” *Id.*

124. *Id.* at 225.

125. See *Albinger v. Harris*, 48 P.3d 711, 715-20 (Mont. 2002) (finding that “the engagement ring was an unconditional, completed gift upon acceptance”).

126. Nina Kotick, *Love and the Law, Part I: Does an Engagement Ring Need to be Returned?*, HUFFINGTON POST (Nov. 11, 2011, 9:02 AM), [http://www.huffingtonpost.com/nina-kotick/love-and-the-law-part-i-d\\_b\\_76108.html](http://www.huffingtonpost.com/nina-kotick/love-and-the-law-part-i-d_b_76108.html).

127. 48 P.3d 711 (Mont. 2002).

128. *Id.* at 720 (“Although the [lower] court implied a condition of marriage attaching to the gift as a matter of law, we do not. In our judgment, the gift was complete upon delivery, and a completed gift is not revocable.”).

129. *Id.* at 718–19 (noting that an *inter vivos* “gift, made without condition, becomes irrevocable upon acceptance” and the court “will not void the transfer when the giver experiences a change of heart” (citations omitted)). See also MONT. CODE ANN. § 70-3-101 (West 2013) (“A gift is a transfer of personal property made voluntarily and without consideration.”).

130. *Albinger*, 48 P.3d at 719 (“When an engagement ring is given as consideration for the promise to marry, a contract is formed and legal action to recover the ring is barred by the abolition

that the no-fault approach in favor of the donor, used by the majority of states, heavily favors “the benefit of predominantly male plaintiffs.”<sup>131</sup> According to the court, this donor-favored approach prolongs the gender bias that legislatures nationwide have attempted to abolish with the repeal of breach-of-promise statutes.<sup>132</sup> Ultimately, the court concluded that “the engagement ring was an unconditional, completed gift upon acceptance and [should] remain[] in [the donee’s] ownership and control.”<sup>133</sup> Montana remains the only state to have a bright-line rule favoring a donee’s ring retention regardless of fault.<sup>134</sup>

## II. EVALUATING THE RESPECTIVE SUCCESSES AND FAILURES OF THE FAULT AND NO-FAULT APPROACHES TO RESOLVING BROKEN ENGAGEMENT LAWSUITS

### A. *The Fault Approach, Despite Its Benefits, Fails to Account for Its Many Weaknesses to be a Sufficient Workable Solution*

#### 1. *The Successes of the Fault Approach*

The appeal of the fault approach lies in its admirable attempt to determine the “correct” and rightful recipient of premarital property when a marriage fails to occur.<sup>135</sup> States that use the fault approach reason that, based on the conditional gift status of an engagement ring, whichever party chose not to meet this condition should not be unjustly enriched by taking ownership of the valuable item.<sup>136</sup> In *Clippard v. Pfefferkorn*, the court held, in relevant part:

[Pfefferkorn] was entitled to retain the ring because, by terminating the engagement, [Clippard] breached his promise to marry [Pfefferkorn]. [Clippard]’s proposal of marriage and giving of the ring and [Pfefferkorn]’s acceptance of the ring and proposal was symbolic of their . . . intention to marry. If [Clippard] had not breached his promise to marry [Pfefferkorn] and the marriage had taken place, there

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of the breach of promise actions.”) (citing MONT. CODE ANN. §§ 27-1-412(2), 27-1-602 (West 2013)).

131. *Id.* at 725 (internal quotation marks omitted).

132. *Id.* at 720 (“If this Court were to fashion a special exception for engagement ring actions under gift law theories, we would perpetuate the gender bias attendant upon the Legislature’s decision to remove from our courts all actions for breach of antenuptial promises.”).

133. *Id.*

134. Cotter, *supra* note 24, at 154 (“In one bold action, the [Montana Supreme Court] declared its independence from the rest of the country . . . when it determined that engagement rings are completed gifts upon receipt by the donee . . .”).

135. See *Lindh v. Surman*, 742 A.2d 643, 645–46 (Pa. 1999) (noting the fault approach’s “appeal[] to [one’s] sense of equity”).

136. See *Clippard v. Pfefferkorn*, 168 S.W.3d 616, 620 (Mo. Ct. App. 2005) (explaining the rationale for the fault-based approach seeking to find the just result).

is no question that [Pfefferkorn] would have been entitled to retain the ring as her own non-marital property.<sup>137</sup>

This well-meaning intention—to seek the truth behind the broken engagement—has roots in both equity and conditional gift theory.<sup>138</sup> As the court discussed in *White v. Finch*, the fault approach based its origins in traditional beliefs about the symbol of the engagement ring and the history surrounding courts' understanding of promises to marry.<sup>139</sup> Furthermore, society's progression no longer requires a woman to rely on the promise of marriage as a vehicle for success in her life, eliminating that rationale for this approach.<sup>140</sup> Therefore, the costly difficulties in applying this approach outweigh its intended benefits.<sup>141</sup>

## 2. Failure of the Fault Approach

Although the fault approach's attempt to achieve equity appears reasonable, it remains unrealistic and unworkable.<sup>142</sup> Strikingly similar to making a determination regarding fault in a marriage's failure, courts find it nearly impossible to correctly determine fault when an engagement fails.<sup>143</sup> The

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137. *Id.* (citing *Smith v. Smith*, 797 S.W.2d 879, 881 (Mo. Ct. App. 1990)).

138. *See* Blecher, *supra* note 9, at 582–84 (tracing the history of engagement ring disputes from attempting to find an equitable result through heartbalm legislation to grounding the case in conditional gift theory).

139. *See White v. Finch*, 209 A.2d 199, 202 (Conn. Cir. Ct. 1964) (outlining the development of the fault approach).

140. *See Aronow v. Silver*, 538 A.2d 851, 853 (N.J. Super. Ct. Ch. Div. 1987) (“To accept the [fault approach] is to ignore our constitutional insistence upon the equality of women, to further unfortunate reality that society still discriminates. That reality is one which courts must not promote. Our obligation is to enforce the law, which bars discrimination. By doing so we move reality in the right direction.”); *see also* KELSO, *supra* note 38, § 2:17 (“Attitudes about gender, employment, courtship, marriage, and divorce have undergone fundamental transformation. In contexts where they were once insulated from liability, people are now expected to bear greater responsibility for the impact of their conduct on members of the opposite sex.” (footnotes omitted)).

141. *See Fowler v. Perry*, 830 N.E.2d 97, 106 (Ind. Ct. App. 2005) (“We do not want to require our judiciary to tackle the seemingly insurmountable task of determining which party was at fault for the termination of an engagement for marriage, as such may force trial courts to sort through volumes of self-serving testimony regarding who-did-what during the engagement.”); *Aronow*, 538 A.2d at 853 (rejecting the fault-based approach based on the constitutional problems over the equality of women it perpetuates); *Vigil v. Haber*, 888 P.2d 455, 457 (N.M. 1994) (recognizing the difficulty in determining fault in broken engagements).

142. *See Benassi v. Back & Neck Pain Clinic, Inc.*, 629 N.W.2d 475, 485 (Minn. Ct. App. 2001) (discussing the difficulties and inherent problems in applying a fault analysis, and Wisconsin's rationale for abandoning the fault approach, which stated that “[t]he question of who is at fault often becomes] lost in the murky depths of contradictory, acrimonious, and largely irrelevant testimony by disappointed couples, their relatives and friends.” (alteration in original) (quoting *Brown v. Thomas*, 379 N.W.2d 868, 873 (Wis. Ct. App. 1985) (internal quotation marks omitted)).

143. *See Aronow*, 538 A.2d at 854 (focusing on the relationship between divorce law and failed engagement law); *see also* David Paul Horowitz, *Burden of Proof*, 82 N.Y. ST. B.A.J. 18, 18 (2010)

lengthy and daunting investigation needed to correctly discern the wrongful party expends the court's resources and may not lead to the "correct" answer, which leaves the court with a lack of clarity when making the determination as to who it believes more.<sup>144</sup>

This approach also fails to define "fault" in the context of determining which party is the cause of a broken engagement.<sup>145</sup> The type of "fault" referred to by parties is neither explicit nor advanced by states that follow this approach.<sup>146</sup> The ability to prove who is at fault grows exceedingly difficult as situations arise where the termination of the engagement is justified and neither party is to blame.<sup>147</sup> Continuing to try to determine the true party at fault would not only be onerous but risky, because a potential likelihood exists that courts may hold the wrong party accountable.<sup>148</sup>

Perhaps the public policy issues that could arise from its introduction exhibit the most damaging failures of the fault-approach.<sup>149</sup> This approach grants the courts unfettered ability to dissect parties' personal lives and romantic relationships,<sup>150</sup> and most Americans do not want the legal system digging through and sorting out these private intimacies for them.<sup>151</sup>

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(discussing New York as being the last state to enact a no-fault divorce statute, and the consequences of litigating fault-divorce proceedings).

144. Cotter, *supra* note 24, at 149 ("These [fault] states still require an investigation into the messy question of who was responsible for the deterioration of the relationship and the ultimate termination of the engagement.").

145. See Carroll v. Curry, 912 N.E.2d 272, 279 (Ill. App. Ct. 2009) (citing Elaine Marie Tomko, Annotation, *Rights in Respect of Engagement and Courtship Presents When Marriage Does Not ensue*, 44 A.L.R.5th 1 (1996)) ("Discrepancy in the use of the term 'fault' is common in engagement ring cases.").

146. *Id.* at 279 ("In some cases, a party is 'at fault' for the termination of an engagement when his or her acts conclusively end the planned nuptials; in other cases, the terminology 'at fault' refers to the actions of the party whose conduct is the underlying cause for the engagement ending." (citing Tomko, *supra* note 145, at 1)).

147. See Heiman v. Parrish, 942 P.2d 631, 637 (Kan. 1997) (listing various ways in which a broken engagement could be justified).

148. See Patterson v. Blanton, 672 N.E.2d 208, 210 (Ohio Ct. App. 1996) (determining that a no-fault rule "eliminate[d] the need for a trial court to engage in the often impossible task of establishing blame in the emotionally complex context of an engagement to be married," and, consequently, embracing the no-fault rule in all suits regarding the division of premarital property). By labeling the undertaking of establishing fault as "often impossible," the Ohio Court of Appeals displayed its reluctance to attempt the task, for fear of finding fault with the incorrect party. *Id.*

149. See Aronow v. Silver, 538 A.2d 851, 854 (N.J. Super. Ct. Ch. Div. 1987) (agreeing that the policy for eliminating no-fault divorces similarly applied to eliminating no-fault engagements); see also Heiman, 942 P.2d at 638 (denouncing the fault-based approach because engagements should be a time of reflection before making the marital commitment).

150. See Brown v. Thomas, 379 N.W.2d 868, 873 (Wis. Ct. App. 1985) (stating that determining who is at fault is often "lost in the murky depths of contradictory, acrimonious, and largely irrelevant testimony by disappointed couples, their relatives and friends").

151. Samantha Barbas, *Saving Privacy From History*, 61 DEPAUL L. REV. 973, 976-79 (2012) (discussing the "right to privacy" most Americans feel is an inherent right that all citizens should be afforded). Barbas outlines the dwindling amount of privacy in Americans' daily lives, which

The fault approach, by penalizing the party who ended the relationship, can also deter parties from ending an engagement for good cause.<sup>152</sup> Society as a whole benefits if a couple, or one member of, realizes their relationship will not succeed for any number of reasons and breaks the engagement before the law forever ties them together in marriage.<sup>153</sup>

Lastly, the fault approach fails because it cannot be reconciled with the legislature's abolishment of the breach-of-promise statutes.<sup>154</sup> The heartbalm statutes were enacted to eradicate jilted lovers from turning their personal lives into courtroom drama, and the fault approach encourages such behavior.<sup>155</sup>

*Kosco* exemplifies the challenging and time-consuming judgments that courts must make when using a fault-based approach. The court in *Kosco* spent six pages of its opinion analyzing the multiple accusations of maltreatment by the opposing parties to attempt to ascertain the party at fault.<sup>156</sup> Furthermore, all of the court's analysis lacks any significance if the court fails to employ the correct definition of fault, or simply comes to the incorrect conclusion.<sup>157</sup>

## B. The No-Fault Approach in Favor of the Donor is Preferable to Both a Fault Analysis and No-Fault Analysis in Favor of the Donee

### 1. Benefits of the No-Fault Approach

Primarily, the no-fault approach in favor of the donor of pre-marital property provides courts with a bright-line rule to use when determining broken engagement suits.<sup>158</sup> A no-fault approach "eliminates the need for a trial court to attempt the often impossible task of determining which, if either, party is at fault."<sup>159</sup> The bright-line rule of the no-fault approach makes it significantly

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supports the proposition that the courts should not be another entity that seeks to investigate citizens' private lives, given the general lack of privacy in society. *Id.*

152. *See Gaden v. Gaden*, 272 N.E.2d 471, 476 (N.Y. 1971) (highlighting the irony of punishing the donor because, "in one sense[,] the engagement period [was] successful if the engagement [was] broken since one of the parties ha[d] wisely utilized this time so as to avoid a marriage that in all probability would fail").

153. *Id.* (noting the lack of true fault that accompanies most broken engagements).

154. *See id.* (refusing to impute a fault requirement into the state heartbalm statute where the legislature had not explicitly included one).

155. *Id.* (determining that the heartbalm statutes were intended "to rid the courts of these actions where the 'wounded' party appear[ed] in court to unfold his or her sorrow before a sympathetic jury").

156. *See Kosco v. Giacone*, No. 5-12-0483, 2013 WL 4041043, at \*1-6 (Ill. App. Ct. Aug. 8, 2013).

157. *See supra* notes 143-48 and accompanying text.

158. *Patterson v. Blanton*, 672 N.E.2d 208, 212 (Ohio Ct. App. 1996) (concluding that the difficulties intrinsic to determining fault led the court to adopt a no-fault approach, which included a bright-line rule to "avoid straying into a legal swamp by declining to undertake a determination of who may be at fault in terminating an engagement"); *see also McIntire v. Raukhorst*, 585 N.E.2d 456, 458 (Ohio Ct. App. 1989) (stating the "bright line" nature of the no-fault approach).

159. *McIntire*, 585 N.E.2d at 458.

easier for courts to decide which party is legally entitled to the engagement ring.<sup>160</sup> This approach also more closely aligns with conditional gift law, which only maintains the gift's revocability if the condition of marriage is not met.<sup>161</sup>

## 2. *The Downside to the No-Fault Approach*

The central failure of the no-fault approach lies in its inability to reconcile its methodology with society's desire for equity and justice.<sup>162</sup> A bright-line rule mandating the engagement ring's return to the donor allows courts to ignore evidence of the donor's conceivably reprehensible behavior when determining that the donee may not keep the ring.<sup>163</sup>

Another argument posits that the no-fault rule is unfairly prejudicial to women.<sup>164</sup> Women and their families often expend the most money on wedding preparations, but women are not entitled to restitution of expenses paid in no-fault jurisdictions if the wedding does not occur as a result of the donor's behavior, despite the donor's entitlement to the engagement ring.<sup>165</sup> While these downfalls to a no-fault approach exist and appear troublesome, incorporating an exception for unconscionable circumstances into the methodology can alleviate many of the complications.

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160. See *supra* note 91 and accompanying text; see also *Campbell v. Robinson*, 726 S.E.2d 221, 226 (S.C. Ct. App. 2012) (holding that because "no legal standard exists by which a fact finder can adjudge culpability or fault in a prenuptial breakup," fault should not play a role in ascertaining who is entitled to the ring).

161. See *Fierro v. Hoel*, 465 N.W.2d 669, 672 (Iowa Ct. App. 1990) (determining that fault has no place in the analysis because an engagement ring is a symbolic item that is fundamentally conditioned upon marriage and requires conditional gift law to resolve the dispute).

162. See Carl E. Schneider, *Marriage, Morals, and the Law: No-Fault Divorce and Moral Discourse*, 1994 UTAH L. REV. 503, 556 (1994) (arguing that the no-fault legal theory of divorce and engagement law has left courts with unsatisfactory and impractical legal theories and solutions); Tushnet, *supra* note 15, at 2617 ("No fault regimes . . . exclude even the most awful behavior from consideration, so that physical abuse—even attempted murder—does not affect property division upon divorce, a conclusion that seems perverse. People have a persistent need to make fault judgments, a need that is particularly powerful when a court is forced to decide how property should be divided." (footnote omitted)).

163. See Tushnet, *supra* note 15, at 2617 (discussing the no fault approach's effect on judicial analyses in property division cases).

164. *Id.* at 2614 ("The current interpretation of antiheartbalm laws is inequitable because it makes women vulnerable to economic loss at the end of an engagement even when men break their promises."); see also *Albinger v. Harris*, 48 P.2d 711, 719–20 (Mont. 2002) (describing how the no-fault rule in favor of the donor perpetuates gender bias against women).

165. See Tushnet, *supra* note 15, at 2610–11 ("While a man can, in many states, regain his ring whenever an engagement ends, a woman cannot recover expenses for a wedding she has painstakingly arranged; not only may she be abandoned at the altar in front of friends and family, she (and her family) will have to pay for the costs of the nonexistent celebration. Lawsuits for recovery of expenses not directed to the defendant, but made in preparation for marriage (for example, travel to a fiancé's residence or a wedding dress), though simple to measure in monetary terms, have generally been held to be prohibited by antiheartbalm laws.")

III. COURTS NATIONWIDE SHOULD ADOPT THE NO-FAULT RULE WITH  
EXCEPTIONS FOR EGREGIOUS CONDUCT AND EXTREME CIRCUMSTANCES SO  
ALL PARTIES INVOLVED CAN PREDICT OUTCOMES AND EXPECT JUSTICE

Each of the three approaches utilized by courts in the fifty states has its advantages and disadvantages, but one of the fundamental flaws in the system is a lack of uniformity.<sup>166</sup> A consistent nationwide standard would allow couples to know what will happen if either party terminates the engagement prior to marriage no matter where the couple is located. This uniform standard may help couples avoid a lengthy and costly divorce in the future by providing the opportunity for any party who feels uncomfortable about the impending marriage to end the engagement with knowledge about the likely outcome of the engagement ring.<sup>167</sup>

The nationwide approach should be based on the no-fault rule already used by a majority of states.<sup>168</sup> This rule's level of predictability, efficiency, and equity protects the privacy interests of parties involved.<sup>169</sup> The approach that should be adopted nationwide is based on the rule Kansas elucidated in *Heiman v. Parrish*.

The court in *Heiman* adopted a no-fault approach in favor of the engagement ring's donor that left room for exceptional circumstances that would warrant the return of the ring to the donor unconscionable.<sup>170</sup> This policy maintains the no-fault approach's predictability and efficiency, while allowing for exceptions in extreme situations.<sup>171</sup> It would be against public policy and the intent of the law to return the ring to the donor when that donor has admitted to infidelity, or when the donee has spent thousands of dollars on the wedding to then have her fiancé end the relationship and retake the ring without reimbursing her for any

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166. See Tomko, *supra* note 145, Part II.A (listing the multitude of legal theories states use to determine the division of premarital property if the marriage does not result from the engagement).

167. See *supra* notes 143–48 and accompanying text (discussing the different definitions of fault and unclear details about personal relationships courts look to that lead to confusing and unclear precedent).

168. See *supra* note 88 and accompanying text.

169. See *Aronow v. Silver*, 538 A.2d 851, 854–55 (N.J. Super. Ct. Ch. Div. 1987) (discussing the difficulty for courts to find fault with only one party in a broken engagement and the foundation in equity that the no-fault approach brings to such cases); *Gaden v. Gaden*, 272 N.E.2d 471, 476 (N.Y. 1971) (finding that most broken engagements have no one person at fault); *Lindh v. Surman*, 742 A.2d 643, 645–46 (Pa. 1999) (“A no-fault approach . . . involves no investigation into the motives or reasons for the cessation of the engagement and requires the return of the engagement ring simply upon the nonoccurrence of the marriage.”).

170. *Heiman v. Parrish*, 942 P.2d 631, 638 (Kan. 1997) (“Ordinarily, the ring should be returned to the donor, regardless of fault. . . . [But] we recognize there may be ‘extremely gross and rare situations’ where fault might be appropriately considered.”).

171. *Id.* (recognizing the utility of the engagement period to test a relationship and the flexibility of allowing a justified rationale for terminating an engagement).

expenses.<sup>172</sup> This approach preserves the advantages of the no-fault approach, but still appreciates the necessity of equity in extreme situations.<sup>173</sup>

Although this approach considers unconscionability in some cases, it does not suggest an unconscionability analysis in every case.<sup>174</sup> An unconscionability analysis may too closely resemble the fault analysis and may appear to undermine the no-fault approach. Therefore, its use must apply only to those scenarios in which severe inequity is readily apparent, so as not to invite the inefficient, lengthy litigation that this approach seeks to avoid.<sup>175</sup>

Consequently, the enactment of a uniform non-strict, no-fault approach, tempered by a limited exception for unconscionable fact patterns, would be the preferred method to resolve the issues surrounding the division of premarital property. State courts or legislatures could implement this approach, rather than implementation through the judicial system.

#### IV. CONCLUSION

The various state approaches to broken engagement lawsuits have led to confusion and misunderstanding in the law with regard to which area of law to use and how to apply it. The traditional fault approach, currently the minority methodology, fails to adequately achieve the fair and equitable result it seeks. Despite its downfalls, the no-fault analysis provides a preferable approach to the fault method, due to its consistency, efficiency, and positive effect on public policy. The adoption of a uniform, non-strict no-fault rule in favor of the donor of an engagement ring—one in which, except for extreme, exigent circumstances, the donor is entitled to the return of the ring regardless of fault—will create a just, efficient, and rational solution.

If Kim Kardashian had fought for her engagement ring in her home state of California, the court would have followed its traditional fault approach—analyzing any potential wrongdoing in the relationship to determine who was entitled to the multi-million dollar sparkler. This approach could have led to the publicizing of personal details of Kim and Kris' life that they may prefer be left out of the public arena. Their famous "love" story operates as a paradigm for

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172. See Lindh, 742 A.2d at 648 (Cappy, J., dissenting) ("I can envision a scenario whereby the prospective bride and her family have expended thousands of dollars in preparation for the [wedding] 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.")

173. See Heiman, 942 P.2d at 638 (noting that fault generally should not play a role in engagement ring determinations).

174. See *id.* (lacking any mention of specific examples of "extremely gross and rare situations" where fault might be appropriately considered).

175. See, e.g., Fowler v. Perry, 830 N.E.2d 97, 106 (Ind. Ct. App. 2005) (adopting a no-fault approach because a fault analysis may waste time and money by forcing courts to wade through "volumes of self-serving testimony" in order to determine the truly wronged party, and because a no-fault approach recognizes the purpose of the engagement period and better reflects the state's divorce methodology). See also Heiman, 942 P.2d at 638 (reserving the fault analysis only for extreme circumstances of unjust behavior).

the benefits of the proposed solution of a uniform no-fault approach, because a court would not have to spend its already limited time examining each messy issue in the failed relationship of these two persons. A standardized no-fault approach, with exceptions for unconscionable scenarios, would, at the very least, give the Kris Humphries of the world peace of mind when contemplating a marriage proposal.