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## Recovery of Engagement Gifts and the Heart Balm Acts

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ranch was very likely to be of more value than that same ranch partitioned into smaller tracts.

A difficult and more complex problem is presented with regard to property which may be of value for oil and gas purposes. In the absence of a provision permitting a partial assignment, what is the effect of an attempted partial assignment of a divided interest by a co-lessee? For example: A lessor executes an oil and gas lease on an entire tract of land to two co-lessees and refuses to lease only a portion of the tract. Immediately upon making tests, it appears to the lessees that only a part of the tract is promising; desiring to delay drilling and preferring to escape payment of delay rentals upon the other portion, a lessee assigns that divided portion to another who surrenders his lease.

Condonation of this practice would have two undesirable results: 1. A lessor, contrary to the intention of the parties at the execution of the lease, could be deprived of delay rentals from an oil and gas lease on a part of his land. 2. The lessees, after the conveyance of the divided interests, would be obligated under two separate sets of implied covenants, that is, to drill an exploratory well, drill offsets, pursue diligent and proper operation, and the covenant of further development. Whether the partitioning results from an assignment of a divided interest by a co-lessee or from a judicial decree, it appears that either will likely impair the value of the lessee's or lessor's interests.

The logical answer to the problem would appear to be that, in absence of a provision, an attempted assignment of a divided interest in an oil and gas lease, does not divide the lease but creates only a sub-lease.

Since the lessees by their acts, in absence of provision, should not be permitted to partition a lease, can and should a court grant a partition with complete disregard for the existing rights and liabilities of the lessor even though the lessor is a party to the action? Similarly, should a court grant a partition without considering carefully whether or not a co-lessee's interest in the lease will be thereby impaired? A partition in kind by the court, in the absence of a provision allowing division, would have the same objections as permitting a co-lessee to make an assignment of a divided interest in the lease.

In conclusion, it is submitted that a Wyoming court should follow *Black et al v. Sylvania Producing Company*<sup>25</sup> if the two following requisites were present: 1. The value of the property would not be reduced by the partition. 2. The lease to the co-lessees provided them with the right to make a partial assignment of the lease. If either were absent, it would appear that the partition should be disallowed.

DONALD N. SHERARD

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#### RECOVERY OF ENGAGEMENT GIFTS AND THE HEART BALM ACTS

The development of the law on the subject of recovery by a donor of the engagement ring and other engagements gifts, in the event of a breaking-off of the engagement, has been, generally speaking, rational and in accordance with

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25. See note 17 supra.

what might simply be called an "average man's sense of justice." This article will attempt to consider first, the state of the law on the subject, and second, the possible effect on it of the so-called Heart Balm legislation adopted in recent years by several states, including Wyoming.<sup>1</sup>

In England, two very early decisions allowed recovery of conditional gifts of engagement without specific reference to the circumstances of the breach of the contract to marry.<sup>2</sup> Another early English case drew an amusing distinction between gifts given by one who "has made his addresses to a lady for some time," recovery of which should be allowed, and gifts "made only to introduce a person to a woman's acquaintance, and by means thereof to gain her favour," recovery of which should not be allowed because the donor is an "adventurer", especially if he is less prosperous than she.<sup>3</sup> This case also referred to the donee's breach as being an element upon which to base recovery. Thus we see an early development of the idea that the donor should recover if the donee breaks the engagement, and, by implication, that the donor should not recover if he is the one who has broken the engagement. Modern English cases have developed this concept, so that it is apparently settled law.<sup>4</sup> Also a modern English court has said, "If the engagement to marry be dissolved by mutual consent, then in the absence of agreement to the contrary, the engagement ring and like gifts must, I think, be returned by each party to the other," and further that "The judgment I have given does not, of course, touch gifts which . . . are absolute and free from condition. It touches conditional gifts only."<sup>5</sup> The latter part of the quote points up the important fact, which must not be overlooked, that these rules apply only to gifts which, from the facts and circumstances, were conditioned on the marriage, and not to gifts intended to be absolute.

In the United States, the law, generally, has developed in a similar manner.<sup>6</sup> One exception, which will be noted now and eliminated from the subsequent discussion, is Louisiana, where, by statute, recovery is permitted regardless of who caused the breach.<sup>7</sup> In all the states in which cases of record on the subject may be found, recovery of conditional gifts of engagement has been allowed where the donee broke the engagement.<sup>8</sup> The following language is typical of the cases:

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1. Wyo. Comp. Stat. 1945, secs. 3-512 to 3-516.
  2. *Young v. Burrell*, 21 Eng. Rep. 29 (1576); *Oldenburgh's Case*, 1 Freem. 213, 89 Eng. Rep. 151 (1676).
  3. *Robinson v. Cumming*, 2 Atk. 409, 26 Eng. Rep. 646 (1742).
  4. *Jacobs v. Davis*, 2 K. B. 532 (1917); *Cohen v. Sellar*, 1 K. B. 536, 15 B. R. C. 85 (1926).
  5. *Cohen v. Sellar*, 1 K. B. 536, 15 B. R. C. 85 (1926).
  6. See 24 Am. Jur., Gifts, secs. 56 to 60; 28 C. J. 651; 38 C. J. S. Gifts sec. 61.
  7. *Decuers v. Bourdet*, 10 La. App. 361, 120 So. 880 (1929); *Wardlaw v. Conrad*, 18 La. App. 387, 137 So. 605 (1931).
  8. *Guffin v. Kelly*, 191 Ga. 880, 14 S. E. (2d) 50 (1941). Real property. Implied trust theory. *Rockafellow v. Newcomb*, 57 Ill. 186 (1870). Real property. Undue influence theory. *Walker v. Hester*, 178 Ky. 342, 198 S. W. 912 (1917). Money. Conditional gift theory. *Grossman v. Greenstein*, 161 Md. 71, 155 Atl. 190 (1931). Money. Conditional gift theory. *Lumsden v. Arbaugh*, 207 Mo. App. 561, 227 S. W. 868 (1921). Piano. Conditional gift theory. *Sloin v. Lavine*, 11 N. J. Misc. 899, 168 Atl. 849 (Sup. Ct. 1933). Engagement ring. Implied condition theory. *Beck v. Cohen*, 237 App. Div. 729, 262 N. Y. Supp. 716 (1st Dept. 1933). Engagement ring. Conditional gift theory. *Ruehling v. Hornung*, 98 Pa. Super. 535 (1930).

"If the piano was given to defendant by plaintiff in contemplation of marriage, and she broke the engagement for no fault of plaintiff, then he can recover."<sup>9</sup> One would not expect to find many cases in which the donor sued to recover when he was the breaching party; in one case it is indicated that such recovery would be denied.<sup>10</sup> The clear implication of most of the other cases is that no such recovery can be had. Likewise, no cases were found as to recovery in the event of a mutual rescission of the engagement (except as will be mentioned subsequently as to Heart Balm legislation), but it is submitted that the quote in the preceding paragraph from an English case is a sensible rule, and might likely be the rule adopted, especially since that English case is cited in several of the United States' cases as supporting authority. Two states distinguish between the engagement ring, which they allow to be recovered regardless of who breached the engagement, and other engagement gifts to which they apply the ordinary rules.<sup>11</sup> Where a donee died before the marriage could be consummated, such was held not to be equivalent to breach by the donee, and recovery was not allowed.<sup>12</sup> The cases indicate that they are considering gifts which are conditioned on engagement; it being apparent that the rules are not meant to apply to gifts intended by the donor to be absolute.<sup>13</sup>

Worthy of mention is the fact that the cases, in the states which fit into the majority pattern, make the fact of who broke the engagement the crucial factor. Fault for the breach is only mentioned incidentally. It is interesting to speculate as to whether a donor who broke the engagement could recover if the donee were clearly a tfault; it seems that the donor should recover, but no case was found with such a fact situation.

We have no decisions of record in Wyoming to indicate what position would be taken by our court; however, independent of the Heart Balm act, it seems reasonable to believe that we would follow the majority rules.

The Heart Balm legislation bars the filing of such actions, and usually abolishes them. Most of the acts enumerate the actions as alienation of effections,

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Engagement ring. Implied condition theory. *Shaw v. Christie*, 160 S. W. (2d) 989 (Texas 1942). Real property. Conditional gift theory. *Williamson v. Johnson*, 62 Vt. 378, 20 Atl. 279, 9 L. R. A. 277, 22 Am. St. Rep. 117 (1890). Money. Conditional gift theory. *Lambert v. Lambert*, 66 W. Va. 520, 66 S. E. 689, 19 Ann. Cas. 537 (1909). Chattels and real property. Failure of consideration theory.

9. *Lumsden v. Arbaugh*, supra note 8.
10. *Schultz v. Duitz*, 253 Ky. 135, 69 S. W. (2d) 27, 92 A. L. R. 600 (1934). Engagement ring. Conditional consideration theory. Donor broke engagement. Donee allowed to recover ring which donor had taken back.
11. *Ruehling v. Hornung*, 98 Pa. Super. 535 (1930). Engagement ring. Recovery allowed regardless of fault; implied condition that if marriage does not take place, ring will be returned. *Albanese v. Indelicato*, 25 N. J. Misc. 144, 51 A. (2d) 110 (D. C. Jersey City 1947). Engagement ring. Recovery allowed, regardless of who broke the engagement, because a gift of an engagement ring is absolutely conditioned on marriage. Recovery of a dinner ring and money was not allowed, because the court would not imply a condition of marriage.
12. *Urbanus v. Burns*, 300 Ill. App. 207, 20 N. E. (2d) 869 (1939).
13. *Richmond v. Nye*, 126 Mich. 602, 85 N. W. 1120 (1901). A Christmas gift, a watch, was found to have been given absolutely to the donee, so not recoverable.

criminal conversation, seduction, and breach of contract to marry.<sup>14</sup> There has been considerable discussion of these acts in legal periodicals, both for and against them. This article will not attempt to repeat or summarize all these arguments; briefly, the basic point of dispute is whether such legislative abolition is necessary and proper, or whether the courts are able to handle the evils and abuses said to be inherent in such actions.<sup>15</sup> Only one state has found its Heart Balm act to be unconstitutional,<sup>16</sup> although several of the acts have been contested.<sup>17</sup>

Specifically, it appears that the Heart Balm acts may be held to bar actions for the recovery of engagement rings and other conditional engagement gifts, regardless of where the fault may lie for the breach of the engagement, and regardless of who actually does break the engagement. This anomalous result has been reached twice in the court of last resort of New York, the Court of Appeals, on the theory that the actions are based upon breach of contract to marry, such being abolished and barred by New York's Heart Balm act.<sup>18</sup> New York's act is practically identical with Wyoming's act, except insofar as Wyoming's act was made retroactive<sup>19</sup> (this extraordinary provision apparently being peculiar to our act). It is interesting to note that there is not unanimity in New York, in spite of the holdings by the highest court; subsequent lower court decisions may be found which go the other way.<sup>20</sup> Also, two lower court decisions have allowed recovery where the engagement was mutually rescinded; the later one of these cases seems likely to stand, since recovery was based upon a new contract to re-deliver gifts, made after the mutual rescission.<sup>21</sup> With the possible exception of these mutual rescission cases, unless the New York Court of Appeals reverses itself, it seems that the lower New York courts will have to bow to the principles of *stare decisis* and refuse to allow such actions. It is interesting to note that the Federal courts construed the New York and Pennsylvania Heart Balm acts in a similar manner, prior to the New York Court of Appeal cases.<sup>22</sup>

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14. Wyo. Comp. Stat. 1945 sec. 3-512.
  15. For a critical article on Heart Balm legislation, see Note, 1 Wyo. L. J. 75 (1947). And see Feinsinger, Attack on Heart Balm, 33 Mich. L. Rev. 979 (1935).
  16. Heck v. Schupp, 394 Ill. 296, 68 N. E. (2d) 464 (1946).
  17. For discussion of constitutional aspects of Heart Balm legislation, see Note, 1 Wyo. L. J. 75 (1947).
  18. Andie v. Kaplan, 263 App. Div. 884, 32 N. Y. Supp. (2d) 429 (2d Dep't 1942), *aff'd*, 288 N. Y. 685, 43 N. E. (2d) 82 (1942); Josephson v. Dry Dock Savings Institution, 266 App. Div. 992, 45 N. Y. Supp. (2d) 120 (1st Dep't 1943), *aff'd* without opinion, 292 N. Y. 666, 56 N. E. (2d) 96 (1944).
  19. Wyo. Sess. Laws 1941, c. 36, sec. 5 reads: "In so far as not violative of constitutional guarantees, the provisions of this Act shall have a retroactive application and shall bar all actions and causes of actions now existing and all suits pending in the State of Wyoming for alienation of affection, criminal conversation, seduction and breach of contract to marry."
  20. Reinhardt v. Schuster, 75 N. Y. Supp. (2d) 779 (Munic. Ct., N. Y. 1948).
  21. Unger v. Hirsch, 180 Misc. 381, 39 N. Y. Supp. (2d) 965 (City Ct. 1943). Court held that there was no breach involved in mutual rescission, hence the act, as applied by the Court of Appeals, did not apply. Spitz v. Maxwell, 186 Misc. 159, 59 N. Y. Supp. (2d) 593 (Sup. Ct. 1945). In addition to reasoning similar to that in the case above, the court found a new contract for re-delivery, as an additional basis for recovery.
  22. A. B. v. C. D., 36 F. Supp. 85 (E. D. Pa. 1940), *aff'd* without opinion, 123 F. (2d) 1017 (C. C. A. 3d 1941), certiorari denied, 314 U. S. 691, 62 Sup. Ct. 361 (1941).

It must be kept firmly in mind that we are discussing rights of action for the recovery of specific real and personal property which was transferred in contemplation of an agreement to marry. We are not concerned with the damages so often condemned in breach of promise suits, such as loss of time, injury to feelings, humiliation and mortification, and the like; these indefinite and unmeasurable damages are perhaps distorted and magnified many times by juries, as has been alleged. And the alleged misapplication of these damages unquestionably is the object of the wrath of the legislatures which have passed Heart Balm acts. Both the New York and the Wyoming acts contain lengthy statement of policy, containing such terms as "grave abuses," "victims of circumstances," "unjust enrichment," and similar terms.<sup>23</sup> The actual sections of abolition refer to "rights of action . . . to recover sums of money as damages;"<sup>24</sup> the sections barring the filing of such actions are phrased, "be unlawful . . . to file . . . any process . . . seeking to recover a sum of money upon any cause of action abolished."<sup>25</sup> Nowhere in these quoted sections of the acts does there appear any language which would seem to sustain the decisions of the New York Court of Appeals; the actions abolished are those for damages, while we are concerned with actions for recovery of specific property. The New York decisions were brief and did not point out with particularity what part of the act they relied upon. There is one other part of the act which, it seems, must be their authority; it is phrased as follows: "No contract to marry . . . shall operate to give rise . . . to any cause or right of action for the breach thereof."<sup>26</sup> This language must be that upon which the decisions are based; its all-inclusive nature may indeed justify the decisions through a very literal construction. However, language in decisions in New York indicate considerable discontent with such a construction of the act.<sup>27</sup> And an even more significant disapproval was voiced by the New York legislature; according to a recent New York Law Review article, the legislature in 1947 passed an act providing that courts should not be prevented, in a proper case, from granting restitution of money or property, transferred in contemplation of an agreement to marry, where such agreement is not performed.<sup>28</sup> According to the article, the law was vetoed by the Governor without memorandum. What circumstances may have justified the veto we do not know, but the significant fact is the definite in-

23. Wyo. Comp. Stat. 1945 sec. 3-512; Thompson's Laws of New York 1939, Civ. Prac. Act, Article 2-A, sec. 61-a.

24. Wyo. Comp. Stat. 1945 sec. 3-513; Thompson's Laws of New York, 1939, Civ. Prac. Act, Article 2-A, sec. 61-b.

25. Wyo. Comp. Stat. 1945 sec. 3-515; Thompson's Laws of New York 1939, Civ. Prac. Act, Article 2-A, sec. 61-e.

26. Wyo. Comp. Stat. 1945 sec. 3-513; Thompson's Laws of New York 1939, Civ. Prac. Act, Article 2-A, sec. 61-d.

27. "The purpose of the new legislation was to prevent a recovery for alleged pecuniary loss, blighted affection, wounded pride, humiliation, and the like, against the one who violated the promise, but not to enable the latter to receive benefits out of his wilful act." From the dissenting opinion in *Andie v. Kaplan*, 32 N. Y. Supp. (2d) 429. "It is difficult to conceive that the Legislature could have intended that the statute should apply to a situation where a party sought to recover the specific real property given in reliance upon fraudulent representations and promise of marriage. Nevertheless this court must bow to the rule of stare decisis and, solely upon the authority of the case last cited, it grants the motion for the dismissal. . . ." From *Morris v. Baird*, 54 N. Y. Supp. (2d) 779, 780 (Sup. Ct. 1945).

28. See Note, 13 Brooklyn L. Rev. 174 (1947).

dication by the legislature that it never intended that the Heart Balm act be so construed.

The only other state in which cases of record, decided on the subject under Heart Balm legislation, were found is New Jersey. There it was early recognized that there is a distinction between actions "to recover sums of money as damage for . . . breach of contract to marry," and other actions such as we are discussing.<sup>29</sup> And a recent New Jersey case has applied the rule of recovery of engagement gifts without any mention of the Heart Balm act.<sup>30</sup> Thus we see that New Jersey did not fall into the trap in which New York finds itself as a result of its strict construction of the act.

If an action for recovery of conditional engagement gifts is brought in Wyoming, the courts should strike down any attempt to raise the Heart Balm act as a defense. The history of this legislative abolition of a common law right of action and the purview of the act itself, especially the statement of policy in the act, show clearly that it is not so all-inclusive as New York has construed it to be. And as mentioned before, both the courts and the legislature of New York are dissatisfied. Indeed, the final result in New York seems to be nothing more or less than the "unjust enrichment" which the act purports to prevent. It appears that scheming individuals can procure the confidence of unsuspecting victims and accept rings and other gifts, secure in the knowledge that they may keep their spoils with the full protection of the law, regardless of their own culpability. This is certainly undesirable, and further, it is unnecessary, as New Jersey has shown.

HARRY A. THOMPSON

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29. *Glazer v. Klughaupt*, 116 N. J. L. 507, 185 Atl. 8 (1936). Action to recover balance due for services rendered as secretary, such having been retained by the defendant by agreement, until marriage. Defendant subsequently broke the engagement. The lower court held that the action was barred by the Heart Balm act. The upper court reversed, holding that the action was based on a contract of hire and was not within the Heart Balm act, which only barred actions "to recover sums of money as damage for . . . breach of contract to marry."
30. *Albanese v. Indelicato*, 25 N. J. 144, 51 A. (2d) 110 (D. C. Jersey City 1947).