

Report From Counsel

Insights and Developments in the Law

Winter 2020

Who Gets the Engagement Ring After a Breakup?

Although engagements are typically a time of joy and associated with new beginnings, some engagements come to an unforeseen end. When this happens, a major question on everyone's mind is "who will get the engagement ring?" The answer is not black and white, explains SmolenPlevy Family Law Attorneys Alan Plevy and Kyung (Kathryn) Dickerson. States vary in their decisions when it comes to engagement rings and how they are viewed. Should you be in a position where your engagement has ended and you want to know what your legal rights are, Plevy and Dickerson suggest seeking legal advice.



Alan Plevy



Kyung (Kathryn)
Dickerson

A diamond is forever... or is it?

Most people consider an engagement ring to be a gift and, once given, the recipient can do with it what she or he wishes. A minority of states agree and consider the ring an unconditional gift. If either person breaks off the engagement, the woman gets to keep the ring.

A few jurisdictions take a slightly different view, calling the ring an "implied gift." In this case, ownership of the ring is determined by whomever calls off the wedding. If the giver breaks it off, he or she is not entitled to the ring, and it becomes a gift. If the receiver breaks off the engagement, he can ask for the ring back.

Most states, however, view an engagement ring as a semi-contract, or a "conditional gift." In this view, the ring is given with the understanding that the couple will get married in the future and symbolizes a verbal contract. Ownership of the ring is not fully transferred until the wedding ceremony is completed.

The common view says that it doesn't matter who did or said what. If the agreement to wed is broken off, ownership of the ring returns to the giver. The reasoning tends to be that, if divorce, even after decades of marriage, can be no-fault, a broken engagement should be as well.

Virginia state law

In Virginia, the state's Supreme Court ruled in December 2016 that the engagement ring is a conditional gift, and should be returned to the giver. It stems from a 2012 case in which Ethan Dockendorf proposed to his fiancée, Julia McGrath, with a two-carat ring worth about \$26,000. Dockendorf broke off the engagement a year later, but McGrath kept the ring. Dockendorf sued McGrath, and won when the Fairfax County Circuit Court ordered McGrath to either return it or pay her ex the \$26,000 because it was a conditional gift. McGrath appealed and

Continued on page 4

Accolades

Once again, SmolenPlevy was ranked by *U.S. News & World Report* in the 2020 edition of "Best Law Firms." SmolenPlevy was recognized for:

- Business organizations
- Family law
- Trusts and estates
- Family law mediation
- Tax law

This was the sixth straight year SmolenPlevy has been honored with this achievement. The "Best Law Firms" ranking was the result of a clean sweep by Principals Jason Smolen, Alan Plevy, Daniel Ruttenberg and Kathryn Dickerson – all named in the 2020 edition of "The Best Lawyers in America."

SmolenPlevy congratulated the 2019 Legal Elite winners, Principals Kathryn Dickerson and Dan Ruttenberg. Kathryn was recognized for family law domestic relations and Dan was recognized for taxes, estates, and trusts. The award, presented by *Virginia Business*, recognizes

Continued on page 4

A Second Walk Down the Aisle Can Complicate Estate Planning

An estate planning rule of thumb is to review (and, if necessary, revise) your estate plan in light of major life events. Such events include a marriage, birth of a child and a divorce. A second marriage also calls for an estate plan review. You'll want to provide for your current spouse, but not inadvertently benefit your former spouse. "If you have children from each marriage, juggling their interests can be a challenge. So it's important to thoroughly review your estate plan with an attorney before a second nuptial," says SmolenPlevy Principal Jason Smolen.



Jason
Smolen

Update your will and other documents

It's critical to review your will, trusts, health care directives, powers of attorney and other estate planning documents to ensure that your wishes are carried out. Otherwise, you might unintentionally benefit your former spouse or his or her family or give them control over your affairs. Check whether your former spouse or members of his or her family are appointed as executor, trustee, guardian, agent or attorney-in-fact in any of your documents, advises SmolenPlevy Principal Dan Ruttenberg.

Consider a prenuptial agreement

If you have children from your previous marriage, you may wish to leave the bulk of your estate to them, particularly if your new spouse is financially independent. The laws in most states, however, make it difficult to "disinherit" your spouse.

For example, many states provide a surviving spouse with an "elective share" — typically between one-third and one-half — of the other spouse's estate, regardless of the terms of his or her will or living trust.

You can use a prenuptial agreement to waive your respective rights to each other's property. These agreements can also be used to serve a variety of other purposes,

including retaining control of a business and defining premarital assets and debt.

Review beneficiary designations

Determine whether your former spouse is still named as a beneficiary of any life insurance policies, annuities or retirement plans and update the beneficiary designation, if appropriate. "Also, keep in mind that, if you've named any minor children from your previous marriage as beneficiaries, and you unexpectedly die, your former spouse will likely become their legal guardian and gain control over their property," says Smolen. If this scenario is unacceptable, consider designating a trust as beneficiary for your child's benefit.



Daniel
Ruttenberg

Have you established any irrevocable trusts that name your former spouse as a beneficiary? If so, do the trusts provide that his or her rights terminate automatically in the event of divorce?

Also, find out whether your divorce decree grants your former spouse any rights with respect to life insurance, retirement plans or other assets. If the answer is yes, your ability to update certain beneficiary designations may be limited.

As you name new beneficiaries, be aware that your new spouse may have mandatory

rights to certain assets, such as qualified retirement plans. If you wish to name someone else as a beneficiary — a child from your previous marriage, for example — you'll have to ask your new spouse to waive these rights in writing.

Make the most of trusts

If you leave wealth to your spouse outright, there's no guarantee that he or she won't spend it all or share it with a new spouse, leaving your children from your previous marriage with nothing. The creative use of trusts can avoid this result and ensure that all your loved ones are provided for.

For example, you might establish a trust for your new spouse (and any children you have together) and a separate trust for your children from your previous marriage, explains Ruttenberg. Another option is to set up a trust that provides your new spouse with income for life and preserves the principal for your children.

Avoid unintended consequences

Getting remarried may be a highlight of your life, but doing so can throw a monkey wrench into your estate plan. That's why it's critical to discuss with an estate planning advisor any revisions necessary to ensure you're not surprised by unintended consequences down the road. For more information, contact Jason Smolen at jdsmlen@smolenplevy.com or Dan Ruttenberg at dhruttenberg@smolenplevy.com

A Father's Rights

The perception that a mother is favored in a child custody proceeding usually arises from the historical fact that often mothers have been, at least in the recent past, considered the primary caregivers for the family's children. As time progresses, however, men and women are becoming increasingly equal when it comes to duties within the home as well as the workplace. Oftentimes, fathers are spending just as much time and energy

raising their children as mothers are. Unfortunately, the work that fathers do is sometimes minimized in order to place children with the biological mother in divorce and custody proceedings. SmolenPlevy Principals Alan Plevy and Kathryn Dickerson say it is important to know your rights and obligations as a father and ensure that those rights are protected for you and your child.

Continued on page 3

A Father's Rights

Continued from page 2

Virginia state law

A father may be concerned that courts favor the mother for sole custody, but this is not the case.

Virginia courts are, by statute, gender-blind when it comes to custody rights. The courts decide on child custody and visitation issues based on a number of factors and a child's or children's best interest. Because the best interests of the children are what the courts use to decide primary or joint custody and other visitation arrangements, there is no assumption that either parent would be a better candidate for sole custody simply due to a parent's sex, explains Dickerson.

Were your rights violated?

A father has obligations in regard to raising his child or children, but along with these obligations come rights as well: the right to custody, the right to visitation if custody is not granted, the right to have a say in how his child is raised, the right to establish paternity, and more.

"When child custody is in question, there is no doubt that a father deserves the same rights and opportunities as the mother," says Plevy. Many fathers suffer damaged or broken relationships with their children when the mother or legal guardian fails to honor the court's visitation schedule, denies visitation, or relocates with the children without court approval or notification.

If your parental rights have been violated, it is imperative that you seek the guidance of an experienced attorney. An attorney can help prove that you can provide an emotionally secure and stable environment, both now and in the long term for your child. Additionally, an attorney may be able to compel the court to modify the terms of custody and visitation orders which will bring justice to you and your family. Contact Alan Plevy at abplevy@smolenplevy.com or Kyung (Kathryn) Dickerson at kndickerson@smolenplevy.com for more information on parental rights in Virginia.

Game, Set, Match: How to Assess a Business' Game Plan

When assessing the short- and long-term viability of commercial borrowers, lenders have many tools at their disposal, including business plans. A business plan provides essential information on how management expects the company to grow — and what strategies it expects to use to achieve its goals. SmolenPlevy Principals Dan Ruttenberg and Jason Smolen outline the important questions to consider when examining your borrowers' business plans.

Does the business plan cover all the bases?

Comprehensive business plans traditionally are composed of these six sections:

1. Executive summary
2. Business description
3. Industry and marketing analysis
4. Management team description
5. Implementation plan
6. Financials

A small or midsize business might balk at compiling a comprehensive business plan. But it's an essential part of the loan

application process for start-ups and when a company is teetering on the edge of bankruptcy or needs financing for a major capital expenditure.

The best plans can be quite simple. In fact, long-winded plans tend to bury management's message. For a small business, the executive summary shouldn't exceed one page, and the maximum number of pages should generally be fewer than 40.

What is the company's vision?

Business planning starts with a long-term vision: Where's the company now and where does it want to be in three, five or 10 years?

Executive summaries are often the first place lenders look, but they're the last page management should write. In other words, wise business owners start with historic financial results and then identify key benchmarks that management wants to achieve. These assumptions will drive the financials.

What about the financials?

The second place lenders look when reviewing a business plan is the financials section. Management's goals are fleshed out in its budgets and financial projections.

For example, suppose a company with \$10 million in sales in 2017 expects to double that figure over a three-year period. How will the borrower get from Point A (\$10 million in 2017) to Point B (\$20 million in 2020)? Many roads may lead to the desired destination.

Let's say the management team decides to double sales by hiring four new salespeople and acquiring the assets of a bankrupt competitor. These assumptions will drive the projected income statement, balance sheet and cash flow statement.

When projecting the income statement, management makes assumptions about variable and fixed costs. Direct materials are generally considered variable. Salaries

Continued on page 4

Accolades

Continued from page 1

the skill and dedication of lawyers and attorneys who demonstrate commitment and passion in their fields. *Virginia Business* annually polls more than 14,000 attorneys in the commonwealth, asking them to select from their peers the best lawyers in each practice category.

SmolenPlevy is proud to announce Principal Kathryn Dickerson's election into the Virginia Law Foundation's 2020 Class of Fellows. Virginia Law Foundation Fellows are nominated confidentially by their peers and are recognized for leadership both in their practices and their communities. The Class of 2020 joins a group of nearly 500 of the best and brightest legal practitioners in Virginia who are committed to the highest ideals of the law and to the concept of being a citizen lawyer.

In the Media

Child support doesn't necessarily cover the cost of school supplies which is, on average, \$600 per child. Who is paying for the expensive TI-84 calculator or laptop their child needs for class? Alan Plevy was featured on WUSA9's *Great Day Washington* discussing the Divorce Dilemma of sharing Back-to-School Costs.

Virginia Lawyers Weekly covered a groundbreaking custody case in which the court sided with a SmolenPlevy client to keep a minor's mental health records private. SmolenPlevy Principal Joshua Isaacs asked the court to quash the father's subpoena for medical records pertaining to his teenage son. As *Virginia Lawyers Weekly* reported, the ruling was a helpful addition to and clarification of the Virginia jurisprudence guiding medical professionals facing a subpoena.

Game, Set, Match: How to Assess a Business' Game Plan

Continued from page 3

and rent are generally fixed. But many fixed costs can be variable over the long term. Consider rent: Once a lease expires, management can relocate to a different facility to accommodate changes in size.

Balance sheet items — receivables, inventory, payables and so on — are generally expected to grow in tandem with revenues. Management makes assumptions about its minimum cash balance, and then debt increases or decreases to keep the balance sheet balanced. In other words, your bank will be expected to fund any cash shortfalls that take place as the company grows, so cash flow projections are among the most significant for lending purposes.

The financials outline how much financing the borrower will need, how it plans

to use those funds and when the borrower expects to repay its loans.

Win or lose?

To better understand your borrower's game plan, take a closer look at the company's industry and marketing analysis, management team description and implementation plan sections. If these sections also contain reasonable and well-founded data and analyses, chances are your borrower — and you — will have a winning game.

If you have any questions about your business plan or any other business law matter, please contact Jason Smolen at jdsmolen@smolenplevy.com or Dan Ruttenberg at dhrittenberg@smolenplevy.com.

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Continued from page 1

argued that he was prohibited from suing for the ring because of Virginia's "heart balm" law — which blocks legal actions against suits including: breach of promise to marry, the alienation of affection and criminal conversion. McGrath lost again when the Virginia Supreme Court decided that the heart balm statute doesn't include conditional gifts, such as an engagement ring.

One way to avoid lengthy litigation regarding an engagement ring is to have

a prenuptial or premarital agreement explaining who's entitled to the ring if the wedding is cancelled, or if you get married but later divorce. If you do not have a prenuptial or premarital agreement and become involved in a dispute regarding the ownership of the engagement ring, please contact Alan Plevy at ablevy@smolenplevy.com or Kyung (Kathryn) Dickerson at kndickerson@smolenplevy.com.

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.