Why should you speak to a separation lawyer about who keeps the engagement ring?

Date : October 12, 2017

In New South Wales the leading case concerning who keeps the engagement ring is *Papathanasopoulos v Vacopoulos* [2007]. Mr V and Ms P were engaged to be married in 2005, but 10 days after their engagement party Ms P called it off. Shortly after calling off the engagement Ms P attempted to return the ring to Mr V, only to retain it in a box with other mementos from the failed relationship. There the ring was destined to stay, until an interaction on the phone between the parties further soured their interactions; to the extent that Ms P instructed her father to throw the box of mementos, including the ring, in the garbage. Mr V, upon learning of the ring's fate, brought a claim against Ms P in the Supreme Court for the value of the ring, being $15,250.

Justice Smart relied on the old engagement ring case of *Cohen v Sellar* (1926) for the four distinct circumstances which determine ownership of the ring following the end of an engagement:

1. ***If a woman who has received a ring in contemplation of marriage refuses to fulfil the conditions of the gift she must return it.***
2. ***If a man has, without a recognised legal justification, refused to carry out his promise of marriage, he cannot demand the return of the engagement ring.***
3. ***It matters not in law that the repudiation of the promise may turn out to the ultimate advantage of both parties. A judge must apply the existing law as to the limits of justification for breach.***
4. ***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 be returned by each party to the other.***

It was raised by Justice Smart that a woman had the ability to plead "legal justification" should she refuse to carry out the marriage but keep the ring. This may be in circumstances where the man is found to have cheated, engaged in violence or other negative conduct.

Justice Smart found that Ms P had no legal justification for ending the engagement, leaving her the holder but not the owner. By throwing it away she failed in her duty as "bailee" for the ring. But what about Ms P's earlier attempt to return the ring? Justice Smart found Mr V's allowance of the ring remaining with Ms P was in the hopes of repairing the relationship. It was not true agreement to her retaining the ring. Mr V succeeded on his application and Ms P was ordered to pay the value of the ring.

How a separation lawyer can help?

While there are four distinct circumstances that can help you determine whether you are the owner or the holder, these can change depending on why the engagement was called off and

by whom. Speak to a separation lawyer from our specialist team to help guide you in relation to who really is entitled to the engagement ring depending on your individual circumstances. We strongly advise you to keep the ring in a safe place until you have been able to seek legal advice, or you and your former partner come to an agreement.

Contact us on 1800 300 170 or email us at familylaw@matthewsfolbigg.com.au

Disclaimer

Family law situations can be complex and sometimes they can involve serious issues. Information outlined is proposed to provide general guidance only. Due to the seriousness of legal matters as well as the uniqueness of your individual situation, professional advice should be sought. For advice, please contact one of our Family Lawyers.