WITH THIS GIFT, I THEE WED...

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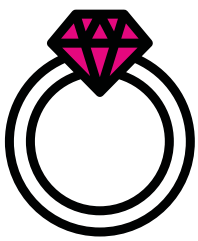
It's almost impossible to ignore the annual Valentine's Day marketing machine. Whether or not you view it as commoditising romance or as a heartfelt gesture, 14th February is awash with the giving of gifts to express whatever emotions abound. When though is a gift, not a gift? As family lawyers, we often see situations where gifts are given that may be of a significant value: whether financial or sentimental. We also see gifts not only between a couple but given to one or the other by friends or family members. So what happens to these gifts on separation and what can be done to protect them in the first place?

Taking scenarios that may be encountered as a relationship progresses in turn:

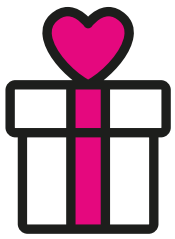


Who keeps the ring?

One of the key questions clients often ask is what happens to the engagement ring. Looking back almost 150 years ago and prior to the introduction of the Married Women's Property Act 1882, the position was stark - wives had to return jewellery to their soon to be ex-husband's and this included engagement rings.

The law is now set out at section 3(2) of the Law Reform (Miscellaneous Provisions) Act 1970. The giving of an engagement ring is presumed to be an absolute gift unless it can be shown that the ring was given on condition (express or implied) that it should be returned if the marriage did not take place. That makes for quite a romantic proposal… I give you this ring but will take it back if we don't make it down the aisle!

Where an engagement ring is a family heirloom and this can be demonstrated, there is arguably an implied condition that the giving of the ring was conditional on the marriage actually taking place and indeed, being returned if the marriage were to come to an end. That's a difficult debate to be had after the event though. Acknowledging that this is an incredibly sensitive conversation, this is a classic situation of 'if in doubt, write it down'.



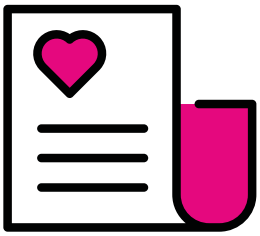
What about wedding gifts or gifts during a marriage?

Where couples have gifted items to one another throughout their relationship, similar to engagement rings, those gifts are viewed as unconditional unless a contrary intention can be demonstrated.

When it comes to wedding gifts, the usual principle is that the party whose family member/friend made the gift, will keep it unless it can be shown to be a joint gift in which case division will need to be agreed. This is perhaps more of a convention than a legal principle. It is

again worth bearing in mind that family heirlooms can be treated as more akin to an inheritance (though as is well known, inheritances are certainly not 'ring-fenced' or protected as of right). The key is to look at the nature and source of the gift, how it has been used and if of financial value, whether that value is needed.

When it comes to a divorce, parties are required in Forms E to disclose all personal belongings worth in excess of £500. That includes any gifts between or received by them – regardless of source or personal value. It is worth bearing mind that a Court can look to those assets when determining what a fair division is applying the well-known principles of sharing, compensation and needs. Whilst personal belongings or gifts can often be disregarded when looking at outcomes, where items are of a greater value, there always remains the risk that the asset may be called up. Again, if in doubt, write it down.

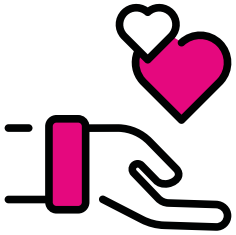


If it is important, document it!

Where there are family heirlooms or items that a party would want to retain if their relationship came to an end, the safest option is to document it. A nuptial agreement can be used for this purpose – and could even address ownership of a discrete item.

Family lawyers will all be familiar with the standard clauses on offer. This includes confirming that wedding gifts will be retained by the party whose family member/friend gave the gift and that any other joint gifts will be divided equally with one party taking the first choice.

There are a range of options but the key is, if something is important to a party or their family, it is worth documenting and making clear how it will be treated in the event of separation.



What about money from parents?

A few different scenarios come to mind here.

Before we even get to the stage of a couple deciding to wed, we often see cohabitating couples moving into a house owned in the sole name of one party.

With cohabitating couples fast becoming the most common type of family arrangement this is now a very common occurrence. It is also a common occurrence for a family member or parent to have helped that party onto the property ladder with financial support. Clarity on whether that support is a loan or a gift is vital

though perhaps the topic of another article. If a gift though, to give protection to the owning party's interest in the property, they should consider asking their partner moving in to sign a Declaration of No Interest. This is particularly so if, for example, the party moving in is going to be contributing towards some of the household expenses, and more so the mortgage.

What if that couple then decide to get married, sell the property and buy a family home together? How is that original gift to be treated or indeed any further assistance provided by family members? The gift v loan debate is very familiar to us all. We have all experienced cases where the crux of the matter relates to the family home and whether money put in by one of the party's parents or family members is to be treated as a loan which needs to be repaid or a gift adding to the pot to be distributed. The lack of any formal written agreement setting out how the monies are to be treated often leads to parents intervening or being joined to proceedings – the costs of which dwarf the costs of properly documenting ownership of a home at the outset.

Couples moving in together, getting married or receiving help from parents and family should always consider that if in doubt, write it down. For the parents or family member, they may well want a Declaration of Trust put in place or a formal loan agreement. Such a document is legally binding and survives a marriage as the ownership of the asset sits outside of the couple themselves. A Declaration between the spouses will likewise still remain valid, but the discretionary nature of the distribution of assets on divorce means that ownership can though be redistributed thereby in effect nullifying the intention of such a Declaration. The betrothed may therefore want to progress their documents from a Declaration of Trust to a nuptial agreement as their relationship itself progresses.

The key message – whether it be a loan, a gift, a ring or a house – if in doubt, write it down.