JUSTICE DOUGLAS, dissenting.

* * * I agree with Justice Murphy that * * * in absence of [an exclusionary] rule of evidence the Amendment would have no effective sanction. * * *

MAPP V. OHIO

367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961).

JUSTICE CLARK delivered the opinion of the Court. * * *

On May 23, 1957, three Cleveland police officers arrived at appellant's residence in that city pursuant to information that "a person [was] hiding out in the home who was wanted for questioning in connection with a recent bombing, and that there was a large amount of policy paraphernalia being hidden in the home." Miss Mapp and her daughter by a former marriage lived on the top floor of the two-family dwelling. Upon their arrival at that house, the officers knocked on the door and demanded entrance but appellant, after telephoning her attorney, refused to admit them without a search warrant. * * *

The officers again sought entrance some three hours later when four or more additional officers arrived on the scene. When Miss Mapp did not come to the door immediately, at least one of the several doors to the house was forcibly opened and the policemen gained admittance. Meanwhile Miss Mapp's attorney arrived, but the officers, having secured their own entry, and continuing in their defiance of the law, would permit him neither to see Miss Mapp nor to enter the house. [When the officers broke into the hall, Miss Mapp] demanded to see the search warrant. A paper, claimed to be a warrant, was held up by one of the officers. She grabbed the "warrant" and placed it in her bosom. A struggle ensued in which the officers recovered the piece of paper and as a result of which they handcuffed appellant because she had been "belligerent" in resisting their official rescue of the "warrant" from her person. * * * Appellant, in handcuffs, was then forcibly taken upstairs to her bedroom where the officers searched a dresser, a chest of drawers, a closet and some suitcases. * * * The search spread to the rest of the second floor * * *. The basement of the building and a trunk found therein were also searched. The obscene materials for possession of which she was ultimately convicted were discovered in the course of that widespread search.

At the trial no search warrant was produced by the prosecution, nor was the failure to produce one explained or accounted for. At best [as the Ohio Supreme Court, which affirmed the conviction, expressed it], "there is, in the record, considerable doubt as to whether there ever was any warrant for the search of defendant's home." * * *

The State says that even if the search were made without authority, or otherwise unreasonably, it is not prevented from using the unconstitutionally seized evidence at trial, citing *Wolf v. Colorado*, * * *. On this appeal, * * * it is urged once again that we review that holding. * * *

The Court in *Wolf* first stated that "[t]he contrariety of views of the States" on the adoption of the exclusionary rule of *Weeks* was "particularly impressive" * * *. While in 1949, prior to the *Wolf* case, almost two-thirds of the States were opposed

to the use of the exclusionary rule, now, despite the *Wolf* case, more than half of those since passing upon it, by their own legislative or judicial decision, have wholly or partly adopted or adhered to the *Weeks* rule. * * * Significantly, among those now following the rule is California which, according to its highest court, was "compelled to reach that conclusion because other remedies have completely failed to secure compliance with the constitutional provisions * * *." In connection with this California case, we note that the second basis elaborated in *Wolf* in support of its failure to enforce the exclusionary doctrine against the States was that "other means of protection" have been afforded "the right to privacy." The experience of California that such other remedies have been worthless and futile is buttressed by the experience of other States.

Likewise, time has set its face against what *Wolf* called the "weighty testimony" of *People v. Defore,* 1926, 242 N.Y. 13, 150 N.E. 585. There Justice (then Judge) Cardozo, rejecting adoption of the *Weeks* exclusionary rule in New York, had said that "[t]he Federal rule as it stands is either too strict or too lax." However the force of that reasoning has been largely vitiated by later decisions of this Court. These include the recent discarding of the "silver platter" doctrine, *Elkins v. United States;* [a] the relaxation of the formerly strict requirements as to standing to challenge the use of evidence thus seized, * * * and finally, the formulation of a method to prevent state use of evidence unconstitutionally seized by federal agents, *Rea v. United States.*[b] * * *

It, therefore, plainly appears that the factual considerations supporting the failure of the *Wolf* Court to include the *Weeks* exclusionary rule when it recognized the enforceability of the right to privacy against the States in 1949, while not basically relevant to the constitutional consideration, could not, in any analysis, now be deemed controlling.

* * * Today we once again examine *Wolf's* constitutional documentation of the right to privacy free from unreasonable state intrusion, and, after its dozen years on our books, are led by it to close the only courtroom door remaining open to evidence secured by official lawlessness in flagrant abuse of that basic right, reserved to all persons as a specific guarantee against that very same unlawful

---

[a] 364 U.S. 206 (1960). Under the "silver platter" doctrine, evidence of a federal crime seized by state police in the course of an illegal search while investigating a state crime could be turned over to federal authorities and used in a federal prosecution so long as federal agents had not participated in the illegal search but had simply received the evidence on a "silver platter." In rejecting the doctrine, the Court pointed out that the determination in *Wolf* that Fourteenth Amendment Due Process prohibited illegal searches and seizures by state officers, marked the "removal of the doctrinal underpinning" for the admissibility of state-seized evidence in federal prosecutions.

[b] 350 U.S. 214 (1956), where the Court held that a federal law enforcement agent who seized evidence on the basis of an invalid search warrant should be enjoined from turning over such evidence to state authorities for use in a state prosecution and from giving testimony concerning the evidence: "The District Court is not asked to enjoin state officials nor in any way to interfere with state agencies in enforcement of state law. * * * The only relief asked is against a federal agent, who obtained the property as a result of the abuse of process issued by a United States Commissioner. * * * In this posture we have then a case that raises not a constitutional question but one concerning our supervisory powers over federal law enforcement agencies."

conduct. We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court.[c]

Since the Fourth Amendment's right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth, it is enforceable against them by the same sanction of exclusion as is used against the Federal Government. Were it otherwise then just as without the *Weeks* rule the assurance against unreasonable federal searches and seizures would be "a form of words," valueless and undeserving of mention in a perpetual charter of inestimable human liberties, so too, without that rule the freedom from state invasions of privacy would be so ephemeral and so neatly severed from its conceptual nexus with the freedom from all brutish means of coercing evidence as not to merit this Court's high regard as a freedom "implicit in 'the concept of ordered liberty.' "

#1

* * * [I]n extending the substantive protections of due process to all constitutionally unreasonable searches—state or federal—it was logically and constitutionally necessary that the exclusion doctrine—an essential part of the right to privacy—be also insisted upon as an essential ingredient of the right newly recognized by the *Wolf* case. In short, the admission of the new constitutional right by *Wolf* could not consistently tolerate denial of its most important constitutional privilege, namely, the exclusion of the evidence which an accused had been forced to give by reason of the unlawful seizure. To hold otherwise is to grant the right but in reality to withhold its privilege and enjoyment. Only last year the Court itself recognized that the purpose of the exclusionary rule "is to deter—to compel

---

[c] Although an illegal arrest or other unreasonable seizure of the person is itself a violation of the Fourth and Fourteenth Amendments, the *Mapp* exclusionary sanction comes into play only when the police have obtained evidence as a result of the unconstitutional seizure. Such is the case when, for example, the police make an illegal arrest and then conduct a fruitful search which is "incident to" that arrest and thus dependent upon the lawfulness of the arrest for its legality. Such may also be the case when the connection between the illegality and the evidence is less apparent, and even when the evidence is verbal, such as a confession obtained from a defendant some time after his illegal arrest. As explained in *Wong Sun v. United States,* 371 U.S. 471 (1963), not "all evidence is 'fruit of the poisonous tree' simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is 'whether, granting establishment of the primary illegality [the evidence] has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.' " In making that judgment, the "temporal proximity of the arrest and the confession, the presence of intervening circumstances and, particularly, the purpose and flagrancy of the official misconduct, are all relevant. The voluntariness of the statement is a threshold requirement." *Brown v. Illinois,* 422 U.S. 590 (1975).

In *United States v. Crews,* 445 U.S. 463 (1980), the Court held that an illegally arrested defendant "is not himself a suppressible 'fruit' and the illegality of his detention cannot deprive the Government of the opportunity to prove his guilt through the introduction of evidence wholly untainted by the police misconduct." Moreover, it is no defense to a state or federal criminal prosecution that the defendant was illegally arrested or forcibly brought within the jurisdiction of the court. The trial of such a defendant violates neither Fifth nor Fourteenth Amendment due process. As explained in *Frisbie v. Collins,* 342 U.S. 519 (1952), this rule rests "on the sound basis that due process of law is satisfied when one present in court is convicted of crime after having been fairly apprized of the charges against him and after a fair trial in accordance with constitutional procedural safeguards. There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will." The Court added that even if the conduct in obtaining defendant's presence violated the federal kidnapping statute the result would be the same, for Congress had not included a bar to prosecution as an available sanction under that law.

respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it."

Indeed, we are aware of no restraint, similar to that rejected today, conditioning the enforcement of any other basic constitutional right. The right to privacy, no less important than any other right carefully and particularly reserved to the people, would stand in marked contrast to all other rights declared as "basic to a free society." * * * [N]othing could be more certain than that when a coerced confession is involved, "the relevant rules of evidence" are overridden without regard to "the incidence of such conduct by the police," slight or frequent. Why should not the same rule apply to what is tantamount to coerced testimony by way of unconstitutional seizure of goods, papers, effects, documents, etc.? We find that, as to the Federal Government the Fourth and Fifth Amendments and, as to the States, the freedom from unconscionable invasions of privacy and the freedom from convictions based upon coerced confessions do enjoy an "intimate relation" in their perpetuation of "principles of humanity and civil liberty * * *." They express "supplementing phases of the same constitutional purpose—to maintain inviolate large areas of personal privacy." The philosophy of each Amendment and of each freedom is complementary to, although not dependent upon, that of the other in its sphere of influence—the very least that together they assure in either sphere is that no man is to be convicted on unconstitutional evidence.

Moreover, our holding * * * is not only the logical dictate of prior cases, but it also makes very good sense. There is no war between the Constitution and common sense. Presently, a federal prosecutor may make no use of evidence illegally seized, but a State's attorney across the street may, although he supposedly is operating under the enforceable prohibitions of the same Amendment. Thus the State, by admitting evidence unlawfully seized, serves to encourage disobedience to the Federal Constitution which it is bound to uphold. * * *

There are those who say, as did Justice (then Judge) Cardozo, that under our constitutional exclusionary doctrine "[t]he criminal is to go free because the constable has blundered." *People v. Defore.* In some cases this will undoubtedly be the result. But, as was said in *Elkins,* "there is another consideration—the imperative of judicial integrity." The criminal goes free, if he must, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence. As Mr. Justice Brandeis, dissenting, said in *Olmstead v. United States,* 277 U.S. 438 (1928): "Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. * * * If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." Nor can it lightly be assumed that, as a practical matter, adoption of the exclusionary rule fetters law enforcement. Only last year this Court expressly considered that contention and found that "pragmatic evidence of a sort" to the contrary was not wanting. * * *. The Court noted that:

> "The federal courts themselves have operated under the exclusionary rule of *Weeks* for almost half a century; yet it has not been suggested either that the Federal Bureau of Investigation has thereby been rendered ineffective, or that the administration of criminal justice

in the federal courts has thereby been disrupted. Moreover, the experience of the states is impressive * * *. The movement toward the rule of exclusion has been halting but seemingly inexorable."

The ignoble shortcut to conviction left open to the State tends to destroy the entire system of constitutional restraints on which the liberties of the people rest. Having once recognized that the right to privacy embodied in the Fourth Amendment is enforceable against the States, and that the right to be secure against rude invasions of privacy by state officers is, therefore, constitutional in origin, we can no longer permit that right to remain an empty promise. Because it is enforceable in the same manner and to like effect as other basic rights secured by the Due Process Clause, we can no longer permit it to be revocable at the whim of any police officer who, in the name of law enforcement itself, chooses to suspend its enjoyment. Our decision, founded on reason and truth, gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, and, to the courts, that judicial integrity so necessary in the true administration of justice. * * *

Reversed and remanded.

JUSTICE BLACK, concurring. * * *

I am still not persuaded that the Fourth Amendment, standing alone, would be enough to bar the introduction into evidence against an accused of papers and effects seized from him in violation of its commands. For the Fourth Amendment does not itself contain any provision expressly precluding the use of such evidence, and I am extremely doubtful that such a provision could properly be inferred from nothing more than the basic command against unreasonable searches and seizures. Reflection on the problem, however, in the light of cases coming before the Court since *Wolf,* has led me to conclude that when the Fourth Amendment's ban against unreasonable searches and seizures is considered together with the Fifth Amendment's ban against compelled self-incrimination, a constitutional basis emerges which not only justifies but actually requires the exclusionary rule. * * *

JUSTICE DOUGLAS, concurring.

* * * I believe that this is an appropriate case in which to put an end to the asymmetry which *Wolf* imported into the law. * * *

Memorandum of JUSTICE STEWART.

* * * I express no view as to the merits of the constitutional issue which the Court today decides. * * *

JUSTICE HARLAN, whom JUSTICE FRANKFURTER and JUSTICE WHITTAKER join, dissenting.

* * * I would not impose upon the States this federal exclusionary remedy. The reasons given by the majority for now suddenly turning its back on *Wolf* seem to me notably unconvincing.

First, it is said that "the factual grounds upon which *Wolf* was based" have since changed, in that more States now follow the *Weeks* exclusionary rule than was so at the time *Wolf* was decided. While that is true, a recent survey indicates

Rodger LINDH, Appellee,

v.

Janis SURMAN, Appellant.

Supreme Court of Pennsylvania.

Argued March 8, 1999.
Decided Nov. 23, 1999.
Reargument Denied Dec. 21, 1999.

Purchaser of engagement ring appealed arbitration decision that awarded ring to his former fiancee. After bench trial, the Court of Common Pleas, Allegheny County, Civil Division, No. AR 0318394, Mazur, J., entered judgment in favor of purchaser. Former fiancee appealed. The Superior Court, No. 0524PGH96, 702 A.2d 560, affirmed, and former fiancee appealed. On grant of allocatur, the Supreme Court, No. 0039 W.D. Appeal Docket 1998, Newman, J., held that purchaser was entitled to return of the ring under no-fault approach to engagement ring disputes, though he broke the engagement.

Affirmed.

Cappy, J., filed a dissenting opinion, in which Castille and Saylor, JJ., joined.

Castille filed a dissenting opinion, in which Cappy and Saylor, JJ., joined.

1. Gifts ⇨34

The law treats the giving of an engagement ring as a conditional gift.

2. Gifts ⇨34

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.

3. Gifts ⇨34

Donor of engagement ring was entitled to return of the ring from former fiancee, under no-fault approach to resolution of engagement ring disputes, though he broke the engagement.

4. Gifts ⇨34

A strict no-fault approach is adopted to determine engagement ring disputes, rather than a fault-based theory or a modified no-fault position, which would look at the reasons for termination of the engagement.

Frank E. Reilly, Pittsburgh, for Janis Surman.

Joanne Ross Wilder, Pittsburgh, for Rodger Lindh.

Before FLAHERTY, C.J., and ZAPPALA, CAPPY, CASTILLE, NIGRO, NEWMAN and SAYLOR, JJ.

OPINION

NEWMAN, Justice.

In this appeal, we are asked to decide whether a donee of an engagement ring must return the ring or its equivalent value when the donor breaks the engagement.

The facts of this case depict a tumultuous engagement between Rodger Lindh (Rodger), a divorced, middle-aged man, and Janis Surman (Janis), the object of Rodger's inconstant affections. In August of 1993, Rodger proposed marriage to Janis. To that purpose, he presented her with a diamond engagement ring that he purchased for $17,400. Rodger testified that the price was less than the ring's market value because he was a "good customer" of the jeweler's, having previously purchased a $4,000 ring for his ex-wife and other expensive jewelry for his children. Janis, who had never been married, accepted his marriage proposal and the ring. Discord developed in the relationship between Rodger and Janis, and in October of 1993 Rodger broke the engagement and asked for the return of the ring. At that time, Janis obliged and gave Rodger the ring. Rodger and Janis attempted to reconcile. They succeeded, and Rodger again pro-

posed marriage, and offered the ring, to Janis. For a second time, Janis accepted. In March of 1994, however, Rodger called off the engagement. He asked for the return of the ring, which Janis refused, and this litigation ensued.

Rodger filed a two-count complaint against Janis, seeking recovery of the ring or a judgment for its equivalent value. The case proceeded to arbitration, where a panel of arbitrators awarded judgment for Janis. Rodger appealed to the Court of Common Pleas of Allegheny County, where a brief non-jury trial resulted in a judgment in favor of Rodger in the amount of $21,200.[1] Janis appealed to the Superior Court, which affirmed the trial court in a 2–1 panel decision. Judge Ford Elliott, writing for the majority, held that no-fault principles should control, and that the ring must be returned regardless of who broke the engagement, and irrespective of the reasons. In a Dissenting Opinion, Judge Schiller criticized the Majority Opinion for creating what he termed a "romantic bailment" because of its refusal to examine the actions of the donor in breaking the engagement, thereby creating a *per se* rule requiring the return of an engagement ring in all circumstances. We granted allocatur to answer this novel question of Pennsylvania law.

[1] We begin our analysis with the only principle on which all parties agree: that Pennsylvania law treats the giving of an engagement ring as a conditional gift. *See Pavlicic v. Vogtsberger,* 390 Pa. 502, 136 A.2d 127 (1957). In *Pavlicic,* the plaintiff supplied his ostensible fiancée with numerous gifts, including money for the purchase of engagement and wedding rings, with the understanding that they were given on the condition that she marry him. When the defendant left him for another man, the plaintiff sued her for recovery of these gifts. Justice Musmanno explained the conditional gift principle:

> 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.

Id. at 507, 136 A.2d at 130.

Where the parties disagree, however, is: (1) what is the condition of the gift (i.e., acceptance of the engagement or the marriage itself), and (2) whether fault is relevant to determining return of the ring. Janis argues that the condition of the gift is acceptance of the marriage proposal, not the performance of the marriage ceremony. She also contends that Pennsylvania law, which treats engagement gifts as implied-in-law conditional gifts, has never recognized a right of recovery in a donor who severs the engagement. In her view, we should not recognize such a right where the donor breaks off the engagement, because, if the condition of the gift is performance of the marriage ceremony, that would reward a donor who prevents the occurrence of the condition, which the donee was ready, willing, and eagerly waiting to perform.

[2] Janis first argues that the condition of the gift is acceptance of the proposal of marriage, such that acceptance of the proposal vests absolute title in the donee. This theory is contrary to Pennsylvania's view of the engagement ring situation. In *Ruehling v. Hornung,* 98 Pa.Super. 535 (1930), the Superior Court provided what is still the most thorough Pennsylvania appellate court analysis of the problem:

> It does not appear whether the engagement was broken by plaintiff or whether it was dissolved by mutual consent. It

1. The basis for the $21,200 award of the trial court was Rodger's testimony that this was the fair market value of the ring.

> follows that in order to permit a recovery by plaintiff, it would be necessary to hold that the gifts were subject to the implied condition that they would be returned by the donee to the donor whenever the engagement was dissolved. Under such a rule *the marriage would be a necessary prerequisite* to the passing of an absolute title to a Christmas gift made in such circumstances. We are unwilling to go that far, *except as to the engagement ring.*

Id. at 540 (emphasis added). This Court later affirmed that "[t]he promise to return an antenuptial gift made in contemplation of marriage *if the marriage does not take place* is a fictitious promise implied in law." *Semenza v. Alfano,* 443 Pa. 201, 204, 279 A.2d 29, 31 (1971) (emphasis added). Our caselaw clearly recognizes the giving of an engagement gift as having 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.

Janis' argument that Pennsylvania law does not permit the donor to recover the ring where the donor terminates the engagement has some basis in the few Pennsylvania authorities that have addressed the matter. The following language from *Ruehling* implies that Janis' position is correct:

> We think that it [the engagement ring] is always given subject to the implied condition that if the marriage does not take place either because of the death, or a disability recognized by the law on the part of, either party, or by breach of the contract by the donee, or its dissolution by mutual consent, the gift shall be returned.

Ruehling, 98 Pa.Super. at 540. Noticeably absent from the recital by the court of the situations where the ring must be returned is when the donor breaks the engagement. Other Pennsylvania authorities also suggest that the donor cannot recover the ring when the donor breaks the engagement. *See* 7 Summary of Pennsylvania Jurisprudence 2d § 15:29, p. 111 ("upon breach of the marriage engagement by the donee, the property may be recovered by the donor"); 17 Pennsylvania Law Encyclopedia, "Gifts," § 9, p. 118 (citing to a 1953 common pleas court decision, "[i]f, on the other hand, the donor wrongfully terminates the engagement, he is not entitled to return of the ring").

[3] This Court, however, has not decided the question of whether the donor is entitled to return of the ring where the donor admittedly ended the engagement. In the context of our conditional gift approach to engagement rings, the issue we must resolve is whether we will follow the fault-based theory, argued by Janis, or the no-fault rule advocated by Rodger. Under a fault-based analysis, return of the ring depends on an assessment of who broke the engagement, which necessarily entails a determination of why that person broke the engagement. A no-fault approach, however, 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.

The rule concerning the return of a ring founded on fault principles has superficial appeal because, in the most outrageous instances of unfair behavior, it appeals to our sense of equity. Where one fiancée has truly "wronged" the other, depending on whether that person was the donor of the ring or the donee, justice appears to dictate that the wronged individual should be allowed to keep, or have the ring returned. However, the process of determining who is "wrong" and who is "right," when most modern relationships are complex circumstances, makes the fault-based approach less desirable. A thorough fault-based inquiry would not only end with the question of who terminated the engagement, but would also examine that person's reasons. In some instances the person who terminated the engagement may have been entirely justified in his or her actions.

This kind of inquiry would invite the parties to stage the most bitter and unpleasant accusations against those whom they nearly made their spouse, and a court would have no clear guidance with regard to how to ascertain who was "at fault." The Supreme Court of Kansas recited the difficulties with the fault-based system:

> What is fault or the unjustifiable calling off of an engagement? By way of illustration, should courts be asked to determine which of the following grounds for breaking an engagement is fault or justified? (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. The list could be endless.

Heiman v. Parrish, 262 Kan. 926, 942 P.2d 631, 637 (1997).

A ring-return rule based on fault principles will inevitably invite acrimony and encourage parties to portray their ex-fiancées in the worst possible light, hoping to drag out the most favorable arguments to justify, or to attack, the termination of an engagement. Furthermore, it is unlikely that trial courts would be presented with situations where fault was clear and easily ascertained and, as noted earlier, determining what constitutes fault would result in a rule that would defy universal application.

The approach that has been described as the modern trend is to apply a no-fault rule to engagement ring cases. *See Vigil v. Haber*, 888 P.2d at 455 (N.M.1994). 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. *See, e.g., Vigil, supra* (relying on the New Mexico legislature's enactment of the first no-fault divorce statute); *Aronow v. Silver*, 223 N.J.Super. 344, 538 A.2d 851 (1987) (noting New Jersey's approval of no-fault divorce). As described by the court in *Vigil*, this trend represents a move "towards a policy that removes fault-finding from the personal-relationship dynamics of marriage and divorce." *Vigil*, 888 P.2d at 457. Indeed, by 1986, with the passage by the South Dakota legislature of no-fault divorce provisions, all fifty states had adopted some form of no-fault divorce. Doris Jonas Freed & Timothy B. Walker, *Family Law in the Fifty States: An Overview*, 19 Fam. L.Q. 331, 335 (1986). Pennsylvania, no exception to this trend, recognizes no-fault divorces.[2] *See* 23 Pa.C.S. § 3301(c), (d). We agree with those jurisdictions that have looked towards the development of no-fault divorce law for a principle to decide engagement ring cases, and the inherent weaknesses in any fault-based system lead us to adopt a no-fault approach to resolution of engagement ring disputes.

Having adopted this no-fault principle, we still must address the original argument that the donor should not get return of the ring when the donor terminates the engagement. Such a rule would be consonant with a no-fault approach, it is argued, because it need not look at the reasons for termination of the engagement; if there is proof that the donor ended the relation-

2. The Superior Court explained the rationale behind the legislature's enactment, in 1980, of provisions for no-fault divorce:

> we emphasize that the purpose of the legislature's enactment of no-fault provisions in divorce in addition to the traditional fault provisions was to provide for dissolution of marriage in a manner which would keep pace with contemporary social realities and not to advance "the vindication of private rights or the punishment of matrimonial wrongs."

Jayne v. Jayne, 443 Pa.Super. 664, 674, 663 A.2d 169, 174 (1995) (citations omitted).

ship, then he has frustrated the occurrence of the condition and cannot benefit from that. In other words, we are asked to adopt a no-fault approach that would always deny the donor return of the ring where the donor breaks the engagement.

[4] We decline to adopt this modified no-fault position,[3] and hold that the donor is entitled to return of the ring even if the donor broke the engagement. We believe that the benefits from the certainty of our rule outweigh its negatives, and that a strict no-fault approach is less flawed than a fault-based theory or modified no-fault position.[4]

We affirm the Order of the Superior Court.

Justice CAPPY files a dissenting opinion in which Justices CASTILLE and SAYLOR join.

Justice CASTILLE files a dissenting opinion in which Justices CAPPY and SAYLOR join.

CAPPY, Justice, dissenting.

The majority advocates that a strict no-fault policy be applied to broken engagements. In endorsing this view, the majority argues that it is not only the modern trend but also the approach which will eliminate the inherent weaknesses of a fault based analysis. According to the majority, by adopting a strict no fault approach, we will remove from the courtroom the necessity of delving into the interpersonal dynamics of broken engagements in order to decide which party retains possession of the engagement ring. This view brings to mind the words of Thomas Campbell from *The Jilted Nymph:* "Better be courted and jilted than never be courted at all." As I cannot endorse this approach, I respectfully dissent.

An engagement ring is a traditional token of the pledge to marry. It is a symbol of nuptial intent dating back to AD 860. The engagement ring was to be of a valued metal representing a financial sacrifice for the husband to be. Two other customs regarding the engagement ring were established in that same century: forfeiture of the ring by a man who reneged on a marriage pledge; surrender of the ring by the woman who broke off an engagement. *See* Charles Panati, *Extraordinary Origins of Everyday Things (copyright 1987).* This concept is consistent with conditional gift law, which has always been followed in Pennsylvania. *Stanger v. Epler,* 382 Pa. 411, 115 A.2d 197 (1955); *Ruehling v. Hornung,* 98 Pa.Super. 535 (1930); C.J.S. Gifts § 61. When the marriage does not take place the agreement is void and the party who prevented the marriage agreement from being fulfilled must forfeit the engagement ring. *Pavlicic v. Vogtsberger,* 390 Pa. 502, 136 A.2d 127 (1957).

The majority urges adoption of its position to relieve trial courts from having the onerous task of sifting through the debris of the broken engagement in order to ascertain who is truly at fault and if there lies a valid justification excusing fault. Could not this theory justifying the majority's decision be advanced in all other arenas that our trial courts must venture? Are broken engagements truly more disturbing than cases where we ask judges and juries to discern possible abuses in nursing homes, day care centers, dependency proceedings involving abused children, and criminal cases involving horrific, irrational injuries to innocent victims? The subject matter our able trial courts address on a daily basis is certainly of equal sordidness as any fact pattern they

3. The modified no-fault position is no more satisfactory than a strict no-fault system because it, too, would create an injustice whenever the donor who called off the wedding had compelling reasons to do so.

4. Although other "scenarios" related to the consequences of a cancelled wedding can undoubtedly be "envisioned," they are not presented for decision in this case and therefore warrant no comment.

may need to address in a simple case of who broke the engagement and why.

I can envision a scenario whereby the prospective bride and her family have expended thousands of dollars in preparation for the culminating event of matrimony 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. Why the majority feels compelled to modernize this relatively simple and ancient legal concept is beyond the understanding of this poor man.

Accordingly, as I see no valid reason to forgo the established precedent in Pennsylvania for determining possession of the engagement ring under the simple concept of conditional gift law, I cannot endorse the modern trend advocated by the majority. Respectfully, I dissent.

Justices CASTILLE and SAYLOR join this dissenting opinion.

CASTILLE, Justice, dissenting.

I dissent from the majority's opinion because I do not believe that a no-fault policy should be applied to broken engagements and the issue of which party retains the engagement ring. The Restatement of Restitution, § 58 comment c, discusses the return of engagement rings and states that:

> Gifts made in the hope that a marriage or contract of marriage will result are not recoverable, in the absence of fraud. Gifts made in anticipation of marriage are not ordinarily expressed to be conditional and, although there is an engagement to marry, if the marriage fails to occur without the fault of the donee, normally the gift cannot be recovered. If, however, the donee obtained the gift fraudulently or if the gift was made for a purpose which could be obtained only by the marriage, a donor who is not himself at fault is entitled to restitution if the marriage does not take place, even if the gift was money. If there is an engagement to marry and the donee, having received the gift without fraud, later wrongfully breaks the promise of marriage, the donor is entitled to restitution if the gift is an engagement ring, a family heirloom or other similar thing intimately connected with the marriage, but not if the gift is one of money intended to be used by the donee before the marriage.

I believe that the Restatement approach is superior to the no-fault policy espoused by the majority because it allows equity its proper place in the outcome. Here, it is undisputed that appellee twice broke his engagement with appellant. Clearly, appellant was not at fault in the breaking off of the couple's engagement, and there is no allegation that she fraudulently induced appellee to propose marriage to her twice. Fairness dictates that appellant, who is the innocent party in this couple's ill-fated romantic connection, retain the engagement ring, which was given to her by appellee as an unconditional gift. I would therefore reverse the order of the Superior Court.

Justices CAPPY and SAYLOR join this dissenting opinion.

COMMONWEALTH of Pennsylvania, Respondent,

v.

Calvin JOHNSON, Petitioner.

Supreme Court of Pennsylvania.

Dec. 2, 1999.

Petition No. 611 W.D. Alloc. Dkt. 1999, for Allowance of Appeal from the Judgment and Memorandum Opinion of Superior Court.