Dissent of Justice Cappy in *Lindh v. Surman*, 560 Pa. 1, 742 A.2d 643 (1999)

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 inter-personal 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. *10 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 **648 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.