ACBA
Young Lawyers Division

Point of Law

The E-Newsletter of the Young Lawyers Division of the Allegheny County Bar Association

Summer 2024

The Engagement Ring - with a Corporate/Transactional Spin

By Diana Bruce

First comes the jewelry store, then comes the engagement ring. To kick off our Point of Law series highlighting the "life cycle" of an engagement ring, we begin with the creation of the jewelry business itself. In Pennsylvania, there are many entity types to choose from when considering forming a new business, including limited liability companies ("LLCs"), limited partnerships, sole proprietorships, and corporations. It is important for every business owner to think through the pros and cons of the different entity options before forming their business. Two of the most popular choices are the LLC and the corporation.

An LLC is a flexible, creative entity structure that bends whichever way its owners—called members—desire. An LLC is made up of at least one member, though there may be more, and allows both individuals and entities to participate in the membership. LLCs can be member-managed or manager-managed, meaning that a Board of Managers is elected and handles the day-to-day business of the company.

The primary benefits of an LLC lie in liability protection, flexible taxation, and a lack of formalities. Members of an LLC are not personally liable for the debts and obligations of the company. This provides great

Continued on page 2

Table of Contents

Point of Law
Newsletter

Editor in Chief
Erika N. Dowd

Senior Editor
Tricia A. Martino

YLD Officers
Chair: Danielle M. Parks
Chair-Elect: Rebeca Himena Miller
Secretary: Tricia A. Martino
Treasurer: Erika N. Dowd
Immediate Past Chair: Tara M. Sease

YLD Council
Hannah N. Barnett
Michael O. Bethune
Morgan M. Bonekovic
Diana C. Bruce
McCall B. Chafin
Matthew J. DeMaio
Timur Dikec
Adam J. Garret
Alison R. Gutierrez
Devyn R. Lisi
Kerven M. Moon
Connor P. Sease
Paige E. Tamecki

Ex-Officios:
Michelle A. Ross

ACBA Liaisons:
Mary Ann Fiorilli
LeeAnn Falcon

The Engagement Ring - With A Corporate/Transactional Spin

Continued from page 1

protection for its members when entering business ventures. Additionally, an LLC is what is known as a "pass-through" or "flow-through" entity, which means that all income, losses, and deductions pass directly to the members without the need to pay federal corporate tax. Finally, an LLC is not required to observe many statutory requirements and is regulated primarily by the operating agreement drafted by the members (and hopefully, by their legal counsel). For these reasons, an LLC is a great choice for the jewelry business where our engagement ring will be made and sold.

Another option often contemplated is a corporation. Two types of corporations are often discussed: the C-Corp and the S-Corp. The C-Corp is the "typical" corporate structure, without limitations on the number and type of shareholders and the type of stock offered. The owners, called shareholders, are liable only to the extent of the consideration they paid for their shares in the corporation. However, unlike an LLC, there are detailed statutory formalities that the corporation must follow, such as annual meetings. And, importantly, corporations are taxed twice—once at the corporate level and once more at the shareholder level—in an oft-lamented process known as "double taxation".

C-Corp becomes an S-Corp by making what is known as an "S Election" under Subchapter S of the Internal Revenue Code. This process is a function of federal law and opens the S-Corp to favorable tax treatment, with a few limitations. While the S-Corp is no longer "double taxed" and instead becomes a pass-through entity like an LLC, it is limited in the number and type of shareholders, as well as to only one type of stock. The S-Corp must also still observe the traditional corporate formalities. Though not as flexible as an LLC, the S-Corp's favorable tax treatment still makes it a good choice for our business.

Regardless of what entity type the owners of our jewelry business choose, the legal analysis does not stop here. Read on to discover the common family law issues once the engagement ring is purchased and the fun begins!

For your average, mom-and-pop small jewelry store, an LLC is the most common, and most advantageous, type of entity because it provides the flexibility to grow with the business and allows the proceeds from the sale of items such as an engagement ring to pass to the owners with the least amount of taxation. Once the ring has been sold and the proceeds taxed, the ownership and value of the ring now become concerns for the new owners - but who actually owns an engagement ring? ■

Diana Bruce is an associate attorney at Meyer Unkovic Scott in Pittsburgh, Pennsylvania, in the firm's Corporate & Business Law and Real Estate & Lending Practice Groups, and can be reached at dcb@muslaw.com.

He Put a Ring on It!

By Alyson Landis

Pennsylvania case law has long established that engagement rings are a conditional gift. The donor provides the ring to the donee on the condition that the two will marry. If the marriage does not occur, donor has the right to request the return of the ring.

The return of the ring should happen regardless of whether the donor is the reason for the condition not being met. May it be cheating, a change of mind, heart, or really any reason, if the marriage has not occurred the donee must return the ring at the donor's request. The no-fault application of the return rule was established by the Pennsylvania Supreme Court in the matter of Lindh v. Surman, 742 A.2d 643, 644 (Pa. 1999), which was argued by our very own Pittsburgh attorneys, the late Frank E. Reilly, Esquire and the late Joanne Ross Wilder, Esquire. The Supreme Court analyzed the trend of fault and no-fault legislature and noted that Pennsylvania already recognized no-fault divorces. As such, the Court declined to adopt anything other than the standard no-fault approach to engagement rings; it specifically valued the certainty of the narrow no-fault approach. No matter what, the donor should expect the return of the ring.

Recent case law provides us with an example of when the donee gets to keep the gift – without the condition being met. In this case, she got to keep the whole jewelry box.

In May 2016, Mr. Robert Campbell and Ms. Jian Tang met on Match.com. Mr. Campbell's relationship status on the site was set as "divorced". The online relationship progressed quickly, and the couple began living together. Mr. Campbell soon proposed to Ms. Tang. He provided more than an engagement ring and proposed with a diamond ring, diamond necklace, and diamond earrings. After accepting the marriage proposal, Ms. Tang took possession of the jewelry.

The couple's engagement progressed and the two set a wedding date. Before the special day, Mr. Campbell approached Ms. Tang with a prenuptial agreement. Ms. Tang hired her own counsel to review the agreement. One week before the wedding, Ms. Tang's counsel earned every cent of the retainer. Her counsel found Mr. Campbell was already married.

Upon learning Mr. Campbell had been lying since his Match profile, Ms. Tang ended the engagement and left the couple's residence, taking all the diamonds with her. A few months later, Mr. Campbell sued Ms. Tang for the return of the diamond jewelry on the legal grounds of replevin, unjust enrichment, and conversion. At the trial level, Mr. Campbell admitted he misrepresented his marital status on his profile and that at any time during their relationship he had failed to tell Ms. Tang he was still married. Why? As Mr. Campbell said, "it was a personal thing" that he "didn't think was that important...". He rationalized that despite his wife filing for divorce many years earlier, the two had failed to finalize the divorce so his wife could continue to receive healthcare benefits and so he could claim additional tax deductions. Mr. Campbell went on to acknowledge that he was aware he could not apply for a marriage license to marry Ms. Tang because he was still married. (Regarding such, the opinion is unclear how he thought the marriage would progress.) Meanwhile, Ms. Tang testified she was oblivious to Mr. Campbell's true marital status until her attorney discovered the same the week prior to her wedding date.

Continued on page 5

But Stores (and People) Need Insurance

By Erika Dowd and Paige Tamecki

During wedding and engagement season, most people are thinking happy thoughts about the new couple and their lives and futures together. However, as attorneys, we see our clients through either the best work worst times in their lives, and there is rarely any inbetween. That can sometimes make us cynical about everyday subjects. So for us, when someone shows us that new, shiny engagement ring, we may not think about the clarity of the diamond, or the size of the band with envy or admiration. Our first thoughts may, and should be - Did you get insurance on that?

Insuring engagement rings should be part of the process for every owner, from business to buyer to inheritor, from all angles. Modern times have also brought on new considerations for jewelers and others in how they should insure themselves, their stock, and their business, from threats.

Both businesses and private owners should consider insuring their jewelry against damage or loss. Even everyday wear and tear takes a toll on jewelry, but larger damage can occur, and accidents are an unfortunate fact of life. Depending on the plan, this insurance could protect the owner from simple neglect, to damage incurred in car accident or as part of natural disasters, and insure that the monetary value of the ring, although perhaps not the sentimental value, are protected.

Particularly for businesses dealing in jewelry, theft is also a very real and material possibility, and one which should be considered by insurance. While jewelry theft may bring images from the last heist movie you watched to mind, theft can occur in many ways, from just this heist or stickup, to potential customers writing bad checks and walking out, to employee's pocketing small items or proceeds, and even, in modern times, through cybersecurity breaches and data theft. For any business, this concern is becoming more and more a part of everyday reality, and every business owner should make sure their insurance coverage considers this increasingly likely possibility.

When insuring a ring, depending on the value of the ring, an accurate estimate of its value can be crucial, and while a jeweler may be able to provide their own accurate, export estimate as to the value of the goods they own, a private owner may need to seek the advice and formal appraisal of an expert to guarantee they will be paid appropriately for the value of their precious goods should any misfortune occur. This can become especially important the higher the value, and the higher the publicity, associated with the case.

Such was exactly the case in the 2010s, in the Risoldi case.

Claire Risoldi, a so-called socialite from Bucks County, PA, filed insurance claims for her home and its contents, including from insurance on many pieces of jewelry and an engagement ring, following a 2013 fire at her Bucks County estate, "Clairemont." (This was the third fire at the estate since 2010) However, following the filing of the claims, serious questions were raised as to the value of the goods in the home and the cost to replace those items. Items claimed including $2,000,000,000 to replace the drapes, and a Lauria engagement ring, claimed to have gone missing following

Submit an article for *Point of Law* | *The YLD's ABA award-winning newsletter*

YLD members are encouraged to write about the practice of law or any substantive legal issue of interest. Additionally, writers are encouraged towrite responses to any article appearing in this issue. Featured authors will have their article – up to 1,000 words long – published along with a brief bio. Articles and inquiries may be submitted to *YLDCommunications@gmail.com.*

Continued from page 3

the fire. However, as investigations proceeded, and intensified, investigators were unable to find a receipt from the original purchase of the ring. In light of the unusually high estimated costs to replace certain goods, many eyebrows were raised. The findings resulted in a slew of litigation, concluding that Mrs. Risoldi had committed over $10 million in insurance fraud. Ms. Risoldi was tried and sentenced to serve 11-½ to 23 months in prison. ***https://www.attorneygeneral.gov/taking-action/case-update-claire-risoldi-sentenced-to-prison-time-10-4-million-in-restitution/.*** However, due to a number of factors, Ms. Risoldi never served her sentence. Ms. Risoldi, sentenced in 2019, passed away at age 76 in July 2023. You can find out more about the case in Commonwealth v. Risoldi, 2020 PA Super 199, 238 A.3d 434.

While an unusual turn of events and not one most engagement ring buyers or owners will have to consider, the case does illustrate the importance, for both the buyer and the insurer, of doing your due diligence, and keeping receipts for large purchases. ■

Erika Dowd is an attorney for Quatrini Law Group, who practices in Social Security and Veterans law. She can be reached at end@qrlegal.com.

Paige Tamecki is an attorney for Edgar Snyder & Associates. She can be reached at ptamecki@edgarsnyder.com

At the lower level, the non-jury trial resulted in favor of Ms. Tang pursuant to her counterclaim.

Mr. Campbell appealed. Although his trial court argument was based on common law and contract/tort law, Mr. Campbell's claims in his appeal asserted his right to the return of the jewels based on Pennsylvania case law regarding engagement gifts.

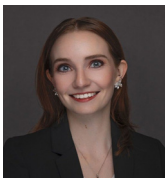
The Superior Court applied the precedents as previously discussed herein, but this was a case of first impression. What should happen when the donor lacked the capacity to contract at the time of the proposal?

As much as any romantic would like marriage to be about love, in our fair Commonwealth marriage is in fact a civil contract. So of course, the parties must have the capacity to contract. The Superior Court reviewed case law and determined it is quite clear that if either party is married at the time of a second marriage, the married individual lacked the legal capacity to remarry, and the subsequent marriage is void.

Mr. Campbell acknowledged his marital status but attempted to argue it was for no reason but his wife's "economic viability". Furthermore, he argued he made a "serious and good faith effort" to marry Ms. Tang, evidenced by the money he spent on legal fees to prepare the pre-nuptial agreement. Absent from the opinion was any argument about the cost and fees incurred to schedule the wedding day. Mr. Campbell also argued that Ms. Tang knew he was married... as she had in fact learned prior to the wedding date though not by his own admission. Ms. Tang countered the sincerity of the pre-nuptial argument since she never signed the agreement.

The Superior Court held Mr. Campbell's active marriage could not be ignored. As noted by both levels of the court, the intentionality behind the ongoing marriage was vital. Despite alleging that he wanted to marry Ms. Tang, Mr. Campbell purposefully did not take the steps to end the marriage so he could remarry prior to meeting Ms. Tang, or perhaps more importantly, after meeting her, proposing to her, scheduling the wedding date, or having an attorney prepare the pre-nuptial agreement. Mr. Campbell was never able to marry Ms. Tang. His failure to obtain a divorce decree was a legal impediment to his ability to contract to marry. Since Mr. Campbell's contract could never be fulfilled, the contract to marry was void. Thus, Pennsylvania case law on conditional gifts was inapplicable. The diamond jewelry was not conditional or in contemplation of marriage. They were simply very nice, expensive gifts, and remained with their new owner.

This is, however, an exception, and in most engagements, the conditional gift is revokable. For Mr. Campbell, however, he put a ring on it, and got nothing for it, for making an invalid contract for marriage. ■



Alyson Landis is a family law attorney at the firm Boyer, Paulisick, Eberle & Biss. She can be reached at alandis@bpe-law.com.

An Argument for Embracing Artificial Intelligence

By Eric Leis

Our profession's relationship with artificial intelligence feels complicated. Depending on the lawyer, it may inspire excitement or fear, enthusiasm or reticence, interest or apathy. I consider myself in the excited, enthused, and interested category. If used and supervised appropriately, artificial intelligence will liberate us from mundane tasks, accelerate legal research, and narrow our focus on relevant facts and legal principles; freeing courts and attorneys from the doldrums that impede our endeavoring to get the law right. To fully realize the potential of artificial intelligence, lawyers, especially young lawyers who will grow in our trade under the auspices of AI, should adopt an expansive understanding of artificial intelligence, endorse a human-in-the-loop approach to using the technology, and develop a basic understanding of computer programming so that they can effectively communicate with the software.

Lawyers should begin by adopting a broad definition of artificial intelligence. Words matter. And if we narrow our understanding of AI to only those media darlings like Chat GPT that, more often than not, are incapable of legal analysis, we run the risk of tossing out the baby with the bath water. Instead, we should expand our definition to include "[a]n artificial system developed in computer software, physical hardware, or other contexts that solves tasks requiring human-like perception, cognition, planning, learning, communication, or physical action," and we will begin to see that such systems are already a regular part of our day. See John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, 132 Stat. 1636, 1697–98 (2018).

Consider your toilet, for example—more specifically, the flush assembly. Invoking the above definition, a Naval Officer and member of Stanford's Autonomous Vehicles Lab used a toilet's flush assembly to explain artificial intelligence to me. A flush assembly, he said, is "physical hardware" that "solves tasks requiring human-like . . . physical action." Without the assembly, humans would need to open the flapper and water valves, monitor the flow of water into the toilet bowl, shut the flapper valve, and then shut the water valve once an appropriate amount of water entered the storage tank. The artificially intelligent flush assembly does all that work for us, allowing humans to simply flip a lever and walk away content with the knowledge that the toilet will flush and refill on its own. Similarly, lawyers can click on "spelling and grammar" and know that Microsoft will find all the spelling errors in a document, or type "McDonnell Douglas" in the Westlaw search bar and expect to receive every case citing the Supreme Court's burden shifting framework. These software programs "solve tasks requiring human-like perception, cognition, [and, to a small extent,] physical action." Without them, a lawyer would need to scour the words of a document, dictionary in hand, or wander through rows of books in a law library. Though generative AI and large language models have only recently burst onto the scene, you can see now that you have actually been employing artificial intelligence for decades.

When practicing alongside AI software, lawyers should endorse a human-in-the-loop approach. Human-in-the-loop is a term used by the Department of Defense to describe the level of human supervision over autonomous weapons. Under this programming philosophy, the autonomous software stops and waits after each task for human operator approval before continuing. In that sense, the software is functioning semi-autonomously. Rather than engage a target, the computer will ask whether it should engage. It can be contrasted with human-on-the-loop, where the autonomous software takes action unless a human intervenes, and human-out-of-the-loop, where there is no opportunity to intervene or supervise

the computer's action. DANIEL S. HOADLEY & NATHAN J. LUCAS, CONG. RSCH. SERV., R45178, ARTIFICIAL INTELLIGENCE AND NATIONAL SECURITY 25 (2018).

BriefCatch is an excellent example of a human-in-the-loop program for lawyers. It searches a document to find formatting mistakes, citation errors, and poorly worded phrases and then provides recommendations to the user. Rather than making changes autonomously, it gives the human operator the chance to approve or ignore each revision. Rudimentary though it may seem in comparison to semi-autonomous weapons, this is a human-in-the-loop technology. Westlaw and Lexis and most other basic forms of artificial intelligence apply a human-in-the-loop methodology. Humans are always in control.

As AI programs improve in their ability to function autonomously, we risk losing that control. If we are not careful and aware, we can slide into the role of supervisor or, worse, abdicate all human authority. ChatGPT offers such a pitfall. Consider the lawyers sanctioned in Mata v. Avianca, Inc. for citing fabricated case law. 678 F. Supp. 3d 443, 456–57 (S.D.N.Y. 2023). One lawyer prompted ChatGPT with legal queries and requested supporting case law. Id. at 456–57. He accepted the fabricated cases at face value, failed to verify their veracity or authority, and included them in his brief to the court. Id. By surrendering control of his legal research to ChatGPT, this lawyer took himself out of the loop.

The problem, then, in Avianca, Inc., was not ChatGPT, but the way the attorney used the software. Had he maintained a human-in-the-loop philosophy, he would have taken the generated responses, searched for the cited cases, and learned that they did not exist. A human-in-the-loop approach adds an extra layer of work for the attorney, but it is necessary if we want to avoid the perils of artificial intelligence.

If lawyers are to effectively control and direct the many AI tools around us, then we must learn how to communicate with computers. To that end, lawyers should familiarize themselves with basic computer programming. Much has written about the "black box" of artificial intelligence, and there are some machine learning programs that are inscrutable even to their own programmers. DAVID FREEMAN ENGSTROM ET AL., GOVERNMENT BY ALGORITHM: ARTIFICIAL INTELLIGENCE IN FEDERAL ADMINISTRATIVE AGENCIES 11 (2020). But that "black box" expands or contracts with the user's knowledge of computer programming. And the more lawyers know about a software's programming, the better we can manipulate it. Consider, again, Westlaw and Lexis search engines. A lawyer who understands the logic coded into these programs can better deploy terms and connectors to narrow the scope of the search results than a user who relies only on natural language searches.

Myriad coding resources can be found online. Code Academy publishes free courses covering the full gamut of computer programming. And Harvard University offers a free, self-paced online computer programming course designed specifically for lawyers.

Lawyers need not be afraid of or shy away from artificial intelligence. And we should not let the cautionary tale of Mata v. Avianca, Inc. deter us from realizing the full potential of AI software. Lawyers are already deploying artificial intelligence daily to do legal research, review documents, and proofread briefs. As long as we continue to adhere to a human-in-the-loop philosophy and improve our understanding of computer programming, lawyers, especially young lawyers, will effectively grow alongside the emerging world of artificial intelligence. It is an exciting time to be embarking on the new frontier of AI-assisted legal practice. ■

Eric Leis is a judicial law clerk. His opinions are his own. He can be reached at EricPLeis@gmail.com