

## **Rings and Promises**

MARGARET F. BRINIG

*George Mason University*

Originally printed in 6 *Journal of Law, Economics, and Organization* 203 (1990)

### 1. INTRODUCTION

My mother had an engagement ring, but neither of my grandmothers did, although both my grandfathers were wealthy enough to afford them. Before 1930, diamond rings were certainly available. The South African diamond mines were discovered in 1880, and they soon replaced the rapidly disappearing supply of diamonds from India and Brazil (McCarthy). In fact, the first reported diamond engagement ring was given by the Emperor Maximilian to Mary of Burgundy in 1377 (Kunz: 234-35). Diamonds were associated in this country with engagement beginning in the 1840s, although they were at first given to men as well as women (Rothman: 161).

However, before the Depression, diamond rings were not considered a requisite for betrothal by most Americans. (Kunz: 230; Rothman: 161). What then made women rather suddenly demand diamonds on the occasion of their engagement, so that by 1945 the “typical” bride wore “a brilliant diamond engagement ring and a wedding ring to match in design?” (McCarthy: frontispiece).

The diamond ring rapidly changed from a relatively obscure token of affection to what amounted to an American tradition. It is customary to explain such a shift in demand in terms of an increase in income, a change in relative prices, or a change in tastes. This assumes a stable legal setting -- that contracts are enforceable. But if the enforceability of a contract is problematic, what formerly was a relatively costly (hence unused) form of private ordering may become more viable (Kronman: 5). This paper looks at the change in America’s demand for diamonds during the period 1930-1985, not as a Madison Avenue success story, but rather as a natural outgrowth of economic processes. The event beginning the movement toward diamond engagement rings was the abolition, with great fanfare, of a now relatively obscure cause of action called the “breach of promise to marry.”

### 2. THE BREACH OF PROMISE ACTION

The breach of promise action entitled a woman whose fiancé had broken off their engagement to sue him in *assumpsit* for damages, including the actual expenses she had incurred in reliance on the marriage. She might also recover for her embarrassment, humiliation, and loss of other marriage opportunities.

Until fairly recently, a woman’s marriage was necessary to secure her social

position. An “old maid” would not only be scorned because she was not attractive enough to snag a husband, but also would be disadvantaged because in later life she would not be secure financially (*Wightman v. Coates*, 15 Mass. 2, 2-4 (1918); Glendon: 31-32; Craik: 166-67; Grossberg: 36). Marriage was, as one writer noted, the “one career open to her,” and once she had made her choice of husbands, the woman’s “options were suddenly, irrevocably gone” (Rothman: 163, Brinig and Carbone: 872-74).

But there was more to the doctrine than this. Many, if not most, women who brought such actions had not only lost a husband, but also their virginity. Particularly during the period between the two world wars, a woman was expected to remain chaste until the time of her engagement (Kinsey, 1948a: 336, 1948b: 364; Gebhard and Johnson: 288). Once she was betrothed, however, sexual intimacy with her fiancé reportedly occurred nearly half the time (Kinsey, 1948a: 336, 1948b: 364). All this was well and good, but if the marriage never came about, she was irretrievably barred from offering an unblemished self to a new suitor and suffered a loss in “market value” (Feinsinger, 1935a: 983). While a man could pretend inexperience, a woman’s virginity or lack of it was a verifiable physical fact. Because of the importance of premarital chastity, damages in breach of promise actions where seduction (intercourse) had occurred were far more substantial than in cases where no sexual intimacy was alleged (*Paul v. Frazier*, 3 Mass. 71, 73 (1807); Grossberg: 46-47). The trials themselves frequently became public spectacles because of testimony regarding the woman’s previous chastity (of lack of the same). By the beginning of the Depression, the breach of promise suit came to be regarded as legally sanctioned blackmail, a threat to marriage and the family (Grossberg: 62-63).

In 1935, a legislator from Indiana sponsored a bill abolishing the heart-balm actions in that state (Byrnes: 94; *Marquette University*). Almost immediately thereafter, similar statutes were passed in most of the other major urban jurisdictions, so that by 1945, sixteen states had eliminated breach of marriage promise. Today, there are only scattered reported breach of marriage promise decision from those few jurisdictions where the action remains viable.

### 3.DEMAND FOR DIAMONDS

At the same time the cause of action for breach of promise was being reconsidered, the diamond industry had faced a period of lessened demand and increased supply. For a few years following 1932, diamonds were stockpiled in Europe to prevent a glut on the market (Epstein, 1982a: 85-87). By the mid-1930s, DeBeers, the diamond-importing institutions, was holding stocks valued at four times its annual sales (Koskoff: 272). New sources of diamonds had been discovered, particularly in the Soviet Union, and the price of diamonds had been in decline for some years (Koskoff: 272).

There was not only a greater supply but also a reduced demand, for sales during the twenty-year period prior to 1939 declined by nearly 100 percent (Epstein, 1982b: 122-23). National advertising was thought of as “vulgar” before the Great Depression (Koskoff: 272), but in 1939, four years after the first states abolished the breach of promise action. DeBeers formed an alliance with a prominent New York advertising agency, Ayers, and prepared to release a significant advertising campaign focused on the slogan that “a diamond is forever”

(Koskoff).

The advertising agency from the start aimed at a national market. One of its more successful techniques was exploitation of the burgeoning film industry: Hollywood stars were given large and conspicuous diamonds to wear off stage, and special scenes involving the presentation of engagement rings were introduced into popular movies after intervention by Ayers (Epstein, 1982b: 123-32), a notable example of which is the Mae West-Cary Grant classic *She Done Him Wrong*.

The industry enjoyed a phenomenal success during the period following 1935, and by 1965, 80 percent of all brides chose diamond engagement rings (Ward et al.: 144). DeBeers attributed the changing market to the Ayers advertising campaign (Epstein, 1982b: 125-63), but, in fact, the market for diamonds began its growth four years before national advertising when the breach of promise action was first abolished in a significant number of important states. (North Dakota had abrogated breach of marriage promise actions in the nineteenth century, but they were at least theoretically available in the other 47 states.

The selection of states that abolished the action in the ten years following 1935 itself presents an interesting study. A glance at a map shows that they appear to have little in common: both urban and farm states, with an average per capita income approximating the norm for the period. What is interesting, however, is that the marriage rate in these states before abolition of the action greatly exceeded the contemporary national rate (67 percent of the United States marriages in 1935, with only 47.7 percent of the population). This suggests that the action for damages made people marry who otherwise would not. The scanty legislative history for the statutes abolishing breach of promise indicates that one motivation, and perhaps the primary one, may have been removal of a vestige of women's historic legal inferiority to men (Feinsinger; 1935a). States especially concerned with gender equality would therefore be expected to be the leaders in this reform, and some were involved at an early stage in the abolition movement. Other states abolishing breach of promise before 1945, including Nevada, Alabama, Florida, and Indiana, had always been important sources for migratory divorces.

#### 4. EXPLAINING THE CHANGE IN DEMAND

The change in demand for diamonds can be studied empirically by analyzing the various factors that might have led to an increased desire for diamonds and observing what turns out to be the most significant. The dramatic increase in demand could be the result of a dramatic decrease in price. Or DeBeers' national advertising campaign could have caused the surge in popularity of diamonds. This has certainly been the position the position taken by the industry (Epstein, 1982b). The hypothesis of interest here, the bond or pledge hypothesis, is that the statutory changes abolishing the breach of promise action explain the increase in the demand for diamonds.

An alternative explanation is that American during and after the Depression began to prefer holding their portfolio in tangible assets that would be more secure than paper currency or bank deposits. In particular, it is possible that diamonds served an investment function during the uncertain financial climate of World War II. The thesis that investment patterns changed

does not fit the more modern data, however, because the decline of interest in diamond engagement rings began before the relaxation in regulation of financial institutions that has led to Americans holding wealth in more liquid forms. In addition, advertising by the diamond industry should have tempered any trend toward the substantial use of diamonds for investment. One important component of the massive advertising campaign was designed to convince the public that diamonds could not be resold, and the DeBeers cartel has enforced this by threatening to cut off supply to dealers who bought diamonds back from purchasers (Epstein, 1982a: 25).

It is difficult, if not impossible, to get information about engagement ring sales fifty or more years ago, since even the large and well-known New York jewelers did not keep sales records by such categories at that time. A proxy for diamond sales in general, of which engagement rings were by all accounts the largest portion (Koskoff; Epstein, 1982b), can be found by examining the quantity of diamond imported into the United States. However, even these figures become complicated by the emigration of most diamond cutters from Europe to the United States during the period 1938-40 (Historical Abstracts). Before this time, most diamonds used in engagement rings were cut in Europe and imported as cut diamonds. After this time, the cutting took place in New York, so that uncut diamonds of gem quality made up the majority of imports (Epstein, 1982b). My analysis therefore uses as a dependent variable a composite of figures reflecting cut gem quality diamonds before 1939 and uncut diamonds thereafter. Independent variables to test the hypotheses of interest are price (PRICE), advertising (ADSDUMMY), the percentage of population living in states abolishing the action (PERCENT), and investment during World War II (WARDUMMY). I also include as an explanatory variable the population of marriageable age (POP), as that surely will affect demand independent of the various hypotheses. Given the number of endogenous right-hand side variables in this demand equation, a system of equations -- with dependent variables demand, price, and percentage of states with statutes abolishing breach of promise actions -- was estimated by Three Stage Least Squares (3SLS).

The explanatory variables for the price chosen by DeBeers (PRICE) are the presence of the advertising campaign conducted by DeBeers (ADSDUMMY), per capita income (PCINC), and the stock of "used" diamonds (USEC). The explanatory variables for the third equation, explaining which states abolished the breach of promise action, are the marriage rate (MARRIAGE), per capita income (PCINC), and a time series function (YEAR).

A Box-Cox study (Judge et al.: 555) of these equations revealed that they were not linear. Logarithmic transformations were therefore done on the non-dummy variables, and a 3SLS regression was performed on the transformed equations. The regression results are summarized in Table 1.

Variable	Coefficient	St. Error	T-Ratio	
Price				
ADSDUMM	0.35772	0.11383	3.1425	0.53298
LOGPCINC	0.59504	0.12517	4.7538	12019

	LOGUSEC	-0.19363	0.063622	-3.0434	-0.85784
LOGCOMPOSIT					
Y	WARDUMM	-0.87820	0.24987	-3.5146	-0.32495
Y	ADSDUMM	-0.19739	0.60364	-0.32699	-0.095013
T	LOGPERCEN	0.33977	0.11866	2.8635	0.51525
	LOGPOP	2.4111	0.87293	2.7621	0.36042
	LOGPRICE	0.86328	0.71901	1.2007	0.27891
LPERCENT					
	LOGMARR	4.63610	1.0878	4.0089	0.45748
	LOGPCINC	0.076996	0.90321	-0.085247	-0.0331133
	LOG YEAR	218.43	103.23	2.1160	0.83156

System  $R^2=0.90797$   $F=116.91$  with 11 D.F.

The data show that four factors explain much of the increase in the number of diamonds demanded in the period 1935-1960. The most important explanatory variable is the abolition of the breach of promise action. The standardized  $\beta$  coefficient of the bonding hypothesis variable is the largest at 0.52, and it is statistically significant. The population of marriageable age was also significant, with the second largest  $\beta$  coefficient of 0.36. The World War II dummy was almost as important as marriageable population ( $\beta = 0.33$ ) and was also significant, although it is negatively related to diamond demand. This suggests that the hardships and absences of the war had a greater effect on demand than the desire to purchase diamonds as investment instruments. Although there is a fourth variable with a sizable  $\beta$  coefficient, price ( $\beta = 0.28$ ), it is not statistically significant. These results support the hypothesis that abolition of the breach of promise action created a need for a bonding device, a need fulfilled by the diamond engagement ring.

## 5. MODERN DEMAND FOR DIAMOND ENGAGEMENT RINGS

Another way of testing the hypothesis that diamond engagement rings serve as pledges is to see what happened to the demand for rings when social mores changed so that sexual intimacy was no longer confined to marriage and engagement. Although from 1965 to 1980 real per capita income continue to increase, the demand for engagement rings leveled off and actually decreased for this more recent period, when cohabitation of nonmarried couples was no longer a curiosity (Koskoff: 273-74, 277).

There has been a recent decline in the number of marriages as more women enter the job market and more couples postpone marriage until education is complete and careers established (England and Farkas). However, since sexual activity by women is not so completely confined

to marriage, the current need for a bonding device before consent to intercourse is greatly diminished. DeBeers has had to reach a new market: diamond ads of the late 1980s no longer show engagement rings, and other diamond jewelry. Ayers' statistics show that since 1980, and unlike the earlier period, engagement rings have never exceeded 20 percent of diamond jewelry sales (Ayers Research: 6-7). Although diamond sales in general increased, the demand for engagement rings has changed, for the wearing of a diamond symbolic of engagement is no longer a prerequisite to premarital intimacy and because the cost to a woman of a broken engagement is no longer as significant.

## 6.CONCLUSION

Students of economics are told that demand curves shift outward because of changes in demographics or, less frequently, tastes. Becker and Stigler argued that, in fact, tastes are relatively constant: that any widespread human behavior can be explained by utility maximization(76). They illustrated their theory by discussing such "tastes" as those for addiction, custom and tradition, and advertising. Although they presented a sophisticated mathematical model, they did not attempt to test their hypotheses empirically. This is an empirical study that proves them as well as Kronman right: looking at one such change in tastes with a less than obvious economic explanation, I have found some evidence that engagement rings were part of an extralegal contract guarantee, so that the "ring is a pledge to bind the contract to marry and it is given on the understanding that the party who breaks the contract must return it" (*Jacobs v. Davis*, [1917] 2 K. B. 532).

The change in demand for diamond engagement rings may therefore be explained by an increase in need for such a bond because of the abolition of a cause of action for breach of marriage promise. My guess, having apparently found a reason for the change in demand for diamond engagement rings, is that many other mysterious demand changes could be accounted for as well, given some thought as to what the commodity might mean to consumers and some exploration of the legal or other changes of the time during which the demand change occurred.