

## For Love or Money? Legal Treatment of Golddiggers

**Author :** Stewart Sterk

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Ruth Sarah Lee, [A Legal Analysis of Romantic Gifts](#), Harvard John M. Olin Fellow's Discussion Paper No. 43 (2012).

Under what circumstances should courts permit a donor to undo what appears to be a completed gift – particularly when the gift is embedded in a real or imagined romantic relationship? After surveying existing law, [Ruth Sarah Lee concludes](#) that traditional doctrine does not adequately deter donees from subtly misleading donors into making generous gifts that the donor would never make if the donee had been honest about his or her intentions. Although the article's focus is on a subspecies of lifetime gifts, its conclusions suggest possible application to testamentary gifts, and to how courts might approach doctrines of undue influence and tortious interference.

Although the conventional wisdom is that gifts are gestures of altruism, love, or kindness, that conventional wisdom does little to explain why a donor makes particular gifts. Much recent scholarship recognizes that gift-giving helps build relationships, in part by enhancing trust between donor and donee. Gifts, particularly gifts that require the donor to learn about the donee's individual preferences, or gifts that are particularly expensive, perform an important signaling function: they indicate to the donee that the donor has an interest in a long-term relationship. As Ms. Lee points out, “[i]f the donor expected only a short-term relationship with the donee, he would not expect enough in return, in terms of affection or trust, for the gift to be worth its cost.” If gifts were freely revocable, they would lose that signaling advantage, because the donor would not be making the same sort of commitment to a relationship with the donee. Nevertheless, as Ms. Lee indicates, engagement gifts are routinely treated as revocable at the donor's behest if the marriage does not occur. Courts invoke either the theory that the gift was conditioned on occurrence of the marriage, or that the theory that the gift was given only as consideration for the marriage.

Even when a romantic gift is not enmeshed in an engagement to be married, courts sometimes hold that the donor is entitled to revoke the gift on a theory of unjust enrichment or fraud. Why should that be? Ms. Lee points out that much as a donor sends a signal when the donor makes a gift, the donee sends a signal by accepting the gift: a signal of interest in developing the relationship. If a donee who has no interest in the relationship accepts gifts without communicating his or her lack of interest, the donor may be misled into making still more gifts. For this reason, Ms. Lee argues that explicit gold-digging is far less serious a problem than subtle gold-digging; the donor who makes gifts to the explicit gold-digger knows precisely what he (or she) is doing.

The problem, Ms. Lee argues, is that traditional remedies for unjust enrichment and fraud do not provide the right incentives for subtle gold-diggers. If doctrine only requires a donee to disgorge gifts received under false pretenses, a scheming donee faces no effective deterrent: if his (or her) chicanery is discovered, he must return the ill-gotten gains; if not, he gets to keep them. (Ms. Lee does ignore the time and effort the donee might spend cultivating an unpleasant donor's interest.) She then identifies a recent case, *United States v. Saenger*, No. CR11-223RAJ, (W.D.Wash. 2012), in which a donee was convicted of mail fraud and sentenced to 46 months in prison for her role in convincing her elderly boyfriend to send her more than \$2 million over the course of a five-year “relationship,” and suggests that in a limited set of cases, criminal penalties might be effective in inducing donees like Saenger to

turn down extravagant gifts when they have no interest in a long-term relationship with the donor. Ms. Lee cautions, however, that “[p]unishment beyond the cost of the gift should be applied very sparingly” because it is only the role of the courts to protect donors from true fraud, not from “the manipulations of their partners, the entreaties of their lovers, or the generous whims of their own hearts.”

Whether gold-digging donees know enough law to worry about the legal consequences of their actions is a question that plagues deterrence-based arguments in this area. But if we take Ms. Lee’s argument on its own terms, the problems she identifies are not limited to lifetime gifts. Gold-diggers — both those who feign romantic interest and those who mislead testators in other ways — can lead those testators to make substantial bequests in their favor. The traditional remedy for misconduct by will beneficiaries is invalidation of the will on undue influence grounds. But that remedy suffers from the same defect as the unjust enrichment remedy against lifetime donees who induce donors to make extravagant gifts under false pretenses: its deterrence potential is limited. Ms. Lee’s analysis implicitly suggests that courts should consider punitive damages awards in at least some undue influence cases (see [Estate of Stockdale](#), 953 A.2d 424 (N.J. 2008)), or should become more receptive to tortious interference with inheritance claims if punitive damages appear unfeasible in the context of a will contest proceeding.

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