

Uncaging the Donee's Freedom

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Date : April 13, 2018

Mark Glover, *Freedom of Inheritance*, 2017 **Utah L. Rev.** 283 (2017), available at [SSRN](#).

Policymakers have long focused on the freedom of disposition, the ability of donors to decide how their property should be distributed. These decisions are almost at the complete discretion of the donor. The donee, on the other hand, has a much smaller role in the process. The donee's only real decision is deciding whether to accept or reject the donor's gift. This choice is termed the freedom of inheritance. While the freedom of disposition is well understood, the freedom of inheritance has not been explored to the same extent.

Prof. Mark Glover's article, *Freedom of Inheritance*, justifies the need to recognize the freedom of inheritance and how policymakers need to facilitate the freedom of inheritance for donees. Prof. Glover explains the importance, mechanics, and rationales behind the freedom of disposition. He then conducts parallel explanations for the freedom of inheritance. The article also analyzes how the freedom of inheritance aids the utility for both the donee and the donor. Prof. Glover delineates how the donee may be better prepared to handle the disposition of the donor's property post-mortem with specific examples. Finally, the article emphasizes how to best facilitate the freedom of inheritance in contrast with the freedom of disposition.

The article articulates how the freedom of inheritance must be based off the freedom of disposition. By explaining the method for creating a disposition and the rationales behind those methods, Prof. Glover furthers demonstrates how the freedom of disposition is a long-standing and important process in modern society. He also points to the utility to both the donor and the donee as substantial reasons behind the current schemes of testate disposition. Finally, he explains that the donees are motivated to act in the donor's best interest because of the incentive of receiving property upon the donor's death.

When discussing the freedom of inheritance, the parallelism between the choices of the donee and donor make it apparent that the freedom of inheritance has just as important of a role in society as does the freedom of disposition. The donor has the overarching right to decide how his or her property is distributed should the donor take the proper steps under the law. Once the donee disclaims the property, the donee is treated as if the donee predeceased the donor and the alternate donee receives the property. This may be viewed as a severe limit on the right of the donee, as the donee cannot direct the new recipient of the property.

The rationale behind allowing the donee to disclaim property is that it allows the donee to determine the utility to the donee and the social welfare of the property itself. By not forcing the donee to take unwanted property, the donee can act in the best way for the donee's selfish interest. While the donor may believe he or she is acting in the best interest of all involved, the fact remains that by the time certain facts come to light about the estate plan, it is far too late for the donor to react accordingly.

To further explain how the donor may not have planned properly, Prof. Glover uses two specific examples. If the donee were insolvent, then disclaiming the gift would have a greater social utility for the alternative donee and would allow the original donee to respect the wishes of the donor. In another example, the donor may not be able to plan correctly for the tax consequences that come with

transferring property. By allowing for disclaimer, the donee can reduce the tax burden of the gift.

To facilitate effective disclaimers, there needs to be a formalized process similar to, but not as strict as, that of executing a will. This allows for finality in the process while still allowing the donee to have greater freedom. Additionally, clear timelines in disclaimer statutes empower the donee to act efficiently. Prof. Glover explains how the donee may be at risk of losing other freedoms or benefits by accepting property, like Medicaid, and disclaiming allows the donee to consider the donee's interests first.

Overall, I highly recommend this article as a clear explanation of the importance of disclaimers for both the donor and the donee. Taking a view from the donee's perspective is an innovative feature of Prof. Glover's article. As an advocate for effective estate planning, I believe this article helps further demonstrate how estate planning involves legal and ethical considerations from both the donor's and donee's perspectives.

[Special thanks to the outstanding assistance of Bailey McGowan, J.D. Candidate May 2018, Texas Tech University School of Law, in preparing this review.]

Cite as: Gerry W. Beyer, *Uncaging the Donee's Freedom*, JOTWELL (April 13, 2018) (reviewing Mark Glover, *Freedom of Inheritance*, 2017 **Utah L. Rev.** 283 (2017), available at SSRN), <https://trustest.jotwell.com/uncaging-the-donees-freedom/>.