

MEMORANDUM

TO: Lawyering Skills I students  
FROM: Professor David E. Sorkin  
DATE: October 5, 2004  
RE: Nick Nichols

We represent Nick Nichols in connection with his dispute against the estate of Dee Kelley.

For several years Dee Kelley had struggled with synovial cell sarcoma, a rare and devastating form of cancer. She experienced a nearly full recovery in February 2004, but apparently the cancer never completely left her body. She suffered a relapse in early July, and succumbed to the disease on September 14.

Kelley was an avid fan of the original Star Trek television series, and especially of William Shatner, the actor who portrayed Captain James T. Kirk on that show. She maintained a website devoted to Shatner, [www.shatman.com](http://www.shatman.com), and operated a home business buying and selling Shatner-related and other Star Trek memorabilia, mostly through the eBay auction site. In conjunction with that business, she held an account on eBay's PayPal online payment service, through which she sent and received payments to and from other eBay users.

In March of 2003, realizing that her cancer would likely take her life, Kelley signed up for a web-based service called GraveMail. In exchange for her subscription fee, GraveMail gave Kelley a place on the web to store messages and statements of her intentions to be distributed according to her instructions upon her death. One of the statements that she uploaded to GraveMail was the following:

Recipient: Nick Nichols <[nick@flashmail.com](mailto:nick@flashmail.com)>

Message: Nick, as you know my cancer is getting worse and I'm probably not going to make it much longer. When I go, I want you to take over my Shatman website and eBay business. My eBay username is shatman1701, and the password is tiberius. You can log into my PayPal account using my email address [shatman@starmail.com](mailto:shatman@starmail.com) and the same password. You can have any money that's left in the PayPal account. You'll need to contact the web hosting company to get the website transferred into your name; it has the same password, tiberius. It was great knowing you; please don't worry about me as I boldly go to my final frontier.

She told Nichols in April 2003 that she had signed up for GraveMail and uploaded a message that he would receive upon her death, but she did not describe the contents of the message.

On September 21, 2004, GraveMail transmitted the above message to Nichols. The same day, Nichols logged onto Kelley's eBay and PayPal accounts, using the information that she had provided in the message. He discovered that there was a credit balance of nearly \$7,901.56 in the PayPal account. He requested that PayPal transfer the entire balance into his own checking account. The money was deposited into his account on September 24.

Dee Kelley's nephew, Scott Montgomery, is the executor of her estate. Montgomery learned about the PayPal account on September 29, as he began inventorying his aunt's assets. He promptly contacted Nichols and demanded that Nichols return the funds he had taken from the PayPal account. Nichols refused, claiming that the money was a gift from Kelley. Montgomery threatened to file suit against Nichols on behalf of the estate.

Nichols and Montgomery are both Illinois residents. Kelley, a native of Montreal, had lived in the Chicago area for the last several years of her life.

Please write a memorandum addressing whether Dee Kelley made a valid gift of the contents of her PayPal account to Nick Nichols under Illinois law.