

Insert at page 696 after Problem 14.5

Problem 14.5.5

Part a. Recall that, in Problem 14.4 (page 690), Chase loaned \$500 to Kane. To secure repayment of the loan, Kane gave Chase possession of a diamond ring and a note giving Chase the power to sell the ring and to apply the proceeds to the repayment of amounts due Chase on the loan. When Kane failed to repay the loan, Chase sold the ring for an amount substantially less than its value. Unknown to Chase, Kane had died the day before she sold the ring.

May Kane's estate recover from Chase either the value of the ring or the difference between its sales price and its value? Would your answer change

- (1) if Chase never tried to learn the value of the ring, or
- (2) if instead Chase knew the value of the ring, but sold it to herself for the amount due on the loan?

Discuss the mutual rights and responsibilities of the parties, giving reasons to support your answer.

Part b. John Jones and Mary Martin were recently divorced. While they were married, they lived in a house on Blackacre. As a part of the property settlement in the divorce:

- (i) John and Mary were each awarded an undivided one-half interest in Blackacre.
- (ii) Mary was given the right to exclusive possession of Blackacre.
- (iii) John agreed to go along with any sale of Blackacre arranged by Mary.
- (iv) John gave Mary a written power of attorney that authorized her to act on his behalf in the sale of Blackacre at any price acceptable to Mary in her sole discretion. The power of attorney expressly provided that it was irrevocable.

Mary recently married Tom Terrific. Immediately after the marriage, Mary signed an Earnest Money Contract in proper form for the sale of Blackacre to "Tom Terrific and wife Mary Martin." Mary signed the Earnest Money Contract for both sellers, signing individually, and as agent for John. Even though Blackacre was worth \$100,000, the price set in the Earnest Money Contract was \$1,000.

Unknown to either Mary or Tom, John had died in an accident the day before the wedding.

Before the sale closed, the executor of John's estate brought an appropriate action seeking to void the sale or, in the alternative for damages, on the basis that

(1) neither John nor the estate were not bound by the Earnest Money Contract, and

(2) in any event, Mary had breached her fiduciary duties in the sale of Blackacre.

Discuss the mutual rights and responsibilities of the parties, giving reasons to support your answer.