

Legal Alert

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DAMON KEY LEONG KUPCHAK HASTERT
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Security and Guidance: Damon Key's Estate Planning Practice Group

Damon Key's Estate Planning Practice Group has been serving clients in this area of law for more than 20 years. We offer a wide range of estate planning to meet the needs of our diverse client base. We serve individuals, families, trusts, estates, and businesses with understanding, care and your best interest in mind.



We provide services in a full range of estate planning matters such as:

- Preparation of Estate Plans - Wills, Trusts, Powers of Attorney and Advance Health Care Directives
- Estate Administration - probate and non-probate
- Tax Planning - minimizing estate and gift taxes
- Gifting - assets among family members
- Charitable Giving – establishment of charitable gifts and the appropriate legal documents, such as charitable remainder trusts and charitable gift annuities
- Dispute Resolution - involving wills, trusts or estates, including alternative dispute resolution (mediation or other settlement or arbitration) and litigation, if necessary
- Guardianship - proceedings, including seeking or disputing appointment of a guardian and assisting with administration
- Family Business Entities - forming, administering and terminating family businesses, family limited partnerships, limited liability companies and corporations
- Business Succession Planning - including Buy-Sell Agreements and gifting of business interests.

At Damon Key, we understand that everyone has a different life story and different plan for the future of their family...

Meet the Members of the Estate Planning Practice Group



Douglas C. Smith

Doug is head of Damon Key Leong Kupchak Hastert's Estate Planning practice. His practice emphasizes estate planning, taxation and business planning. He assists individuals, families and businesses with their legal needs. Doug has been selected Best Lawyers in Hawaii for Estate Planning since 2008 by his peers. He also was selected as the national recipient of the 2009 Elsiné Katz Volunteer Leader of the Year for Goodwill Industries International, Inc. Awarded annually by Goodwill Industries, this award recognizes an outstanding volunteer leader who works to support the Goodwill programs and helps further the mission of the organization, and who demonstrates exceptional leadership qualities in his/her daily work. Doug attended the University of Hawaii, William S. Richardson School of Law. He also attended the University of California at Santa Barbara and received a B. A. in Philosophy and Economics.



Christine A. Kubota

Chris, born and reared in Japan, joined the firm in 1988 and immediately began building a practice in estate planning, corporate, commercial, and real estate law primarily with Japanese-speaking clients. To address the needs of her Japanese clients, her practice also encompasses immigration law and employment matters.

Chris is the Chair Elect for the Honolulu Japanese Chamber of Commerce in Hawaii, Vice President of the United Japanese Society, Board Member of the Hawaii Senior Life Enrichment Association and Hiroshima Kenjinkai. She was elected as an Outstanding Member of the Honolulu Japanese Chamber of Commerce in 2007 and a finalist in Pacific Business News Women Who Mean Business in 2010. She volunteers as Mistress of Ceremony in many cultural and community gatherings and utilizes her bilingual and bicultural background to serve non-profit corporations. She also serves on the Board of the Hawaii State Bar Association and is a member of the Supreme Court Committee on Equal Access to the Courts.

Chris received her law degree from the University of the Pacific, McGeorge School of Law (J.D. 1988) and a B.A. in International Relations and Asian Studies in 1977 from Chaminade University. While in law school, she was an editor of *The Transnational Lawyer*, and was awarded The Transnational Lawyer Scholarship and the Community Legal Service IOLTA Program's Scholarship. She was also active in the Pacific International Law Society and the Asian American Law Student Association.



Courtney S. Kajikawa

Courtney is licensed to practice law in California (inactive) and Hawaii. She practices in the Estate Planning, Business and Commercial and Immigration Practice Groups. She is a member of the American Bar Association, Hawaii State Bar Association ("HSBA"), Hawaii Estate Planning Council and the American Immigration Lawyers Association. In 2009, she served as Chair of the HSBA's Probate & Estate Planning Section and as a member of the 2010 HSBA Strategic Planning Committee. Courtney is also an active member of the Program and Community Affairs Committee with the Honolulu Japanese Chamber of Commerce and the Event Management Committee with the YWCA of Oahu. She is a graduate of Loyola Law School (J.D. 2001), Occidental College (B.A. Cum Laude 1998), and participated in the Waseda University (Study Abroad Program, 1996-1997) in Tokyo, Japan during her junior year at Occidental College.



Caron N. Ikeda

Caron's practice is in the areas of estate planning and tax law. She is Vice Chair for the Elder Law Section of the Hawaii State Bar Association, and a member of the American Bar Association, Hawaii Estate Planning Council and the Honolulu Japanese Chamber of Commerce. She received her law degree from the University of Denver, Sturm College of Law in 2006 and her Master of Laws in Taxation from the University of Denver, Graduate Tax Program in 2007. She attended the University of Hawaii at Manoa and received her Bachelor of Business Administration in Finance in 2003. She is a former First Circuit Court law clerk. Caron grew up on the Big Island and is a graduate of Konawaena High School.

Legislative Update: Changes to Federal Estate Tax Laws



Caron N. Ikeda

On December 17, 2010, President Obama signed into law the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. Under the Act, the federal estate tax, which went away in 2001 and was to have returned with a vengeance in 2011, is revived, but with a friendlier estate and gift tax exemption amount of \$5,000,000, and a maximum tax rate of 35%. The Act will sunset on December 31, 2012, meaning that within two years Congress is expected to take action again. After this time, if Congress takes no further action, the estate and gift tax exemption amount will return to \$1,000,000, with a 55% maximum tax rate.

The Act replaces 2010's "modified carryover basis" rule with the former, and more favorable, "step-up" basis rule. Under 2010's modified carryover basis rules, there was limited opportunity to get a cost basis step up upon a property owner's death. Under the step-up basis rules now in place, cost basis is again stepped up to the fair market value of the asset on the decedent's date of death. The Act also allows for portability, or the ability of a surviving spouse to take advantage of his or her deceased spouse's unused exemption amount even if this is not preserved in a trust. Portability is only available to estates of decedents dying after December 31, 2010.

Estates of decedents dying in 2010 have the option of applying either: (1) the 2011 rules of an estate tax exemption amount of \$5,000,000, with a 35% maximum tax rate and step-up basis rules, or (2) the 2010 rules providing for no estate tax and

modified carryover basis. Estates below \$5,000,000 will probably elect for the new law to apply.

These changes likely will not affect the estate planning documents in place for most persons, but they do provide some new gifting opportunities for those persons with larger estates. The State of Hawaii in 2010 also adopted a separate estate tax.

For more information or questions about these new laws or its effect on your estate plan, please call Caron at 531-8031 ext 609 or email her at cni@hawaiiilawyer.com



Did You Know

Question: If your insurance company refuses to pay your doctor for treatment of an injury after an auto accident, can you sue the insurance company?

Answer: Surprisingly, the Hawaii Supreme Court held in a 1998 case, Wilson v. AIG, that only the doctor could sue the insurance company for not paying benefits for treatment. The court ruled the policy holder was not the real party in interest because the payment was sought by the doctor. The Hawaii Intermediate Court of Appeals recently ruled in Kim v. Liberty Mutual Fire Ins. Co. that the Hawaii Legislature overruled the Wilson case. In 2006, the legislature passed Act 198, which says the doctor or the policy holder may submit a payment dispute to the Insurance Commissioner, pursue arbitration or sue in court. So now the policy holder can sue for benefits if the insurance company fails to pay the medical provider.

Continuing Founder's Legacy

By James C. McWhinnie
Chairman of Litigation Practice Group

As seen in MidWeek December 8, 2010 issue



Today, it's a bit difficult to comprehend the impact, but in 1963, it turned heads – a law partnership between a grandson of haole missionaries from New England and the son of a Big Island sugar cane plantation worker from Japan. In the 1950s and '60s, those in power were predominantly white. Few Asian or women lawyers worked in Hawaii law firms, and none were partners in larger firms.

Damon and Shigekane became one of the first interracial law firms in Hawaii. Cyril Francis "Frank" Damon Jr. and Henry Shigekane had met while attending Yale University. They became friends and, years later, after their legal careers initially took different directions, in 1963 they formed a unique partnership. While Henry retired from the firm in 1978, Frank continued to serve clients in the estate planning practice area for many years and, on occasion, still comes to the office.

That uncommon partnership still influences our firm today, now known as Damon Key Leong Kupchak Hastert. We pride ourselves on our ability to recognize and understand different viewpoints, and to extend respect to each person involved in the process. We have always fought hard for our clients, but we also fight with dignity. As a result, after disputes are resolved, we often develop long-lasting positive relationships with opposing counsel and even parties.

When recently retired Hawaii Supreme Court Justice Steven H. Levinson left in early 1989 to become a Circuit Court judge, I was asked to join the firm as a litigator. A key factor in my decision to join the firm was Denis C.H. Leong, who was the firm's president and managing director, and a very practical, level-headed leader. Amid an office of strong-willed and independent-thinking attorneys, Denis was the consensus-builder who always promoted and exemplified our unique firm culture.

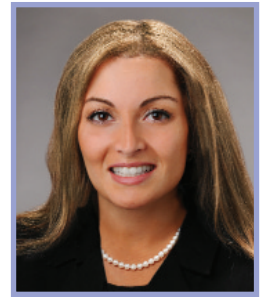
Today, the firm continues its legacy of ethnic and cultural diversity. We are a full-service law firm handling a wide variety of civil litigation matters, including business and commercial disputes, real estate disputes, land use, construction and personal injury matters. In all we do, we strive to continue our founders' vision of professionalism and collaboration.



Damon Key Litigation Group:

*Sitting from left to right: Greg Kugle, Mark Murakami, Ken Kupchak, Jim McWhinnie
Standing from left to right: Christi-Anne Kudo Chock, Matthew Evans, Michael Yoshida,
Diane Hastert, Rebecca Copeland, Steven Gray and Noelle Catalan*

Damon Key Welcomes Sara Mostafa-Ray



Damon Key Leong Kupchak Hastert is pleased to announce Sara Mostafa-Ray as the newest addition to our firm in both the Immigration and Business and Commercial Practice Groups. Her immigration practice includes assisting clients with immigrant and non-immigrant visa applications, U.S. citizenship applications, consular practice, removal defense and asylum cases. Sara is also experienced in advising clients with respect to a wide variety of business transactions. She previously worked on business entity formation, employment transactions, public and private securities offerings, mergers and acquisitions, SEC disclosure and corporate governance matters with Cooley LLP in California. Prior to joining Damon Key this year, Sara worked in immigrant outreach with the Domestic Violence Action Center, a nonprofit legal agency in Honolulu.

“Sara’s professional experience is a great asset to our firm in the Immigration and Business & Commercial practice areas,” said Vice President and Director Michael Yoshida. “We are excited to have someone with her unique qualifications and skill set on the team.”

Sara hails from New Jersey, to where her parents immigrated from Egypt long before she was born. Multilingual (she can converse in both Arabic and Spanish), Sara was destined for a career where she interacts with international clients. And perhaps law runs in her blood, as one of her uncles served on the Egyptian Supreme Court. After earning a Bachelor of Arts degree, magna cum laude, in Economics and International Relations from the University of Pennsylvania, where she was the recipient of a four-year AT&T and Lucent Technologies Scholarship, Sara then earned her Juris Doctorate degree from the UCLA School of Law, where she was awarded the Jubas Horn Scholarship.

After spending time at law firms in Pennsylvania and California, Sara welcomed the opportunity to

come to Hawaii when her husband’s naval career brought the family to the Islands in 2008. She joined the Domestic Violence Action Center in Honolulu where her work entailed educating the public, including personnel at schools, hospitals, consulates and legal agencies, on immigration law as it affects victims of domestic violence. She cites the experience as being immensely rewarding and is excited to be able to continue positively impacting clients’ lives in substantial ways.

“When I was researching different firms in Honolulu, I was immediately drawn to the diversity at Damon Key” she said. “I knew I wanted to be part of a firm with a solid Immigration practice and also wanted to mesh with the firm’s culture. I’ve found both at Damon Key.”

Outside of helping her clients and spending time with her husband and toddler, Sara’s primary passion is traveling, and she even considered becoming an international journalist before pursuing a career in law. She also enjoys outdoor activities and tries to squeeze in time at the beach and hikes into her busy schedule.



Continuing our Founders Commitment to Public Service



In addition to being active Board members and chairs on sub-committees for the Hawaii State Bar Association, national, local, international, and industry associations, the Damon Key lawyers serve the community in the following areas:

Noelle Catalan volunteers her time at the Make-A-Wish Foundation of Hawaii and Aloha United Way Society of Young Leaders.

Tred Eyerly keeps count of whales (NOAA), helps to keep our beaches clean (Sierra Club) and takes on pro bono cases for the Hawai'i Legal Aid Society.

Diane Hastert's deep commitment to our local and national communities is reflected in her being elected as a National Director of Easter Seals, Inc., where she serves as secretary to the Board and the chair of the Public Affairs Committee. She also is a director of the Easter Seals Hawaii Foundation. In addition, she devotes herself to improving the legal profession, having been appointed by the Supreme Court to both the Disciplinary Board of the Hawaii Supreme Court and the Board of Bar Examiners.

Courtney Kajikawa volunteers with the Honolulu Japanese Chamber of Commerce and helps organize events for the YWCA of Oahu.

Chris Kubota continues her committee work at the Supreme Court for equal access to the Courts. She also has joined the Hawaii State Bar's strategic planning committee for the implementation of a Mentor/Mentee program for new lawyers. She truly enjoys her time volunteering for the United Japanese Society, Hiroshima Kenjinkai and Hawaii Senior Life Enrichment Organization where she conducts seminars, coordinates events and MCs parties both in English and Japanese. She is also the incoming Chair for the Honolulu Japanese Chamber of Commerce (starting July 2011) and looks forward to working with the local businesses to strengthen Hawaii's economy.

Greg Kugle provides pro bono or reduced rate legal advice to charitable organizations including Kailua United Methodist Church, The Sisters of the Sacred Hearts, and the Defend Oahu Coalition. He also volunteers his time in organizations committed to providing continuing legal education, such as the Hawaii State Bar Association's Real Property and Financial Services Section and the American Bar Association's Forum on the Construction Industry.

Ken Kupchak continues to volunteer his time as Vice Chair of the Board of Trustees at Mid-Pacific Institute and is active in many other committees at the school, focusing on improving education in Hawaii.

David McCauley continues to accept pro bono asylum cases for those who fear returning to their home country, and provides pro bono representation in other areas of immigration law, including matters in immigration court. He is also a volunteer member of the Board of the Lyon Arboretum Association.

Mark Murakami volunteers his time at the Legal Aid Society and with PONY Baseball on the Windward side.

Jim McWhinnie continues to volunteer his time as a member of the Hawai'i Supreme Court's Special Committee on Judicial Performance, as an arbitrator in the State of Hawaii's Court Annexed Arbitration Program, and as a Delegate to the United States District Court Judicial Conference. As a Past President of the Oahu Country Club, he also serves on OCC's Long Range Planning Committee. Further, Jim and his wife, Stacey, assist the Le Jardin Academy Boys Varsity Basketball Team in various capacities.

Chris Pan volunteers his time as a member of the Oahu Advisory Board for Best Buddies Hawaii and through community service projects with the Yale Club of Hawaii. He is also active with his church, First Presbyterian Church of Honolulu at Ko'olau, and provides pro bono legal advice.

Doug Smith continues to work with Catholic Charities, and also shares his leadership skills with Goodwill Contract Services Hawaii (Chair), 'Oahu 'Oahu Ko'olau (Chair) and the Episcopal Church of Hawaii (Vice-Chancellor).

Mike Yoshida helps with his wife and daughter's passion of swimming by volunteering with the Hawaii Swim Association and continues with his own passion by serving as a Board member at the Koko Head Skeet Club.

Meritas Recertification Recently Awarded to Damon Key



James C. McWhinnie

Damon Key is proud to announce that it was just recently awarded recertification in Meritas, a non-profit global alliance of independent, full service business law firms located in more than 60 countries. Headquartered in Minneapolis, Minnesota, Meritas has 170 member firms that employ more than 6,600 lawyers worldwide. Meritas' goal is to connect business owners and in-house counsel with expert worldwide legal counsel who offer local insight, local rates and world-class client service. Meritas is the only law firm alliance with an established and comprehensive means of monitoring and enhancing the quality of its member firms — a process that saves our clients a great deal of time in validating law firm and attorney credentials and experience. All Meritas firms are regularly assessed and recertified for the breadth of their practice expertise and client satisfaction. The organization's extensive due diligence process ensures that only firms meeting the strict tenets of the Meritas Quality Assurance Program are allowed to maintain their membership, which ensures that clients can easily tap into pre-screened, reliable legal expertise worldwide. Each firm's performance and quality feedback is reflected in a Satisfaction Index score, which is made available online.

Meritas membership is selective and by invitation only. In regions where such peer review ratings are available (such as in North America, South America, Europe, much of Asia, the Middle East, Central & South America, etc.) Meritas firms are required to be AV-rated (i.e., the top rating) in the Martindale-Hubbell directory (a law firm directory in existence for more than 140 years). Damon Key was invited to join Meritas in 1990, and as a condition of our membership, we are required to successfully complete recertification every three (3) years. Since then, we have been very active in the organization — Diane Hastert, Christine Kubota and I have each served terms as Directors of Meritas (formerly known as Commercial Law Affiliates), and Diane and I have also served as Vice Chairs on the Executive Committee of the Meritas Board of Directors.

Member firms must adhere to rigorous service standards to maintain membership. We are very proud of our firm's achievements, and look forward to continuing our mutually beneficial relationship. Meritas' Quality Assurance Program is not just valuable for our clients seeking legal expertise around the world, it also provides us with a framework to consistently monitor and address the quality of the services we provide for our clients.

The recertification process includes an exacting self-assessment, peer review by other law firms and client feedback. It also examines such factors as the timeliness and the quality of a firm's client service, as well as its professional conduct and adherence to Meritas policies, including acknowledging and responding to Meritas firm and client correspondence within 24 hours.

"Businesses trust the Meritas alliance of law firms because of their top-tier quality, convenience, consistency and value," said Tanna Moore, President and CEO of Meritas. "Damon Key Leong Kupchak Hastert has demonstrated its commitment to world-class client service and, as such, has successfully earned its recertification in Meritas." For more information, visit www.meritas.org or call +1 (612) 339-8680.

Founded in 1963, Damon Key Leong Kupchak Hastert continues to serve the Hawaii business community with the connections and capabilities of an international practice, holding the highest standards for business law and commercial litigation. The firm is part of the Meritas network of more than 170 independent law firms in at least 60 countries, and the only representative in Hawaii. Currently operating with a total of 25 lawyers and a slightly greater number of support staff, the firm's practice areas include: Bankruptcy & Creditor's Rights; Business & Commercial; Civil Litigation & Dispute Resolution (including a variety of commercial, construction, employment, insurance coverage, product liability, real estate and land use, and other cases); Construction Law; Employment; Estate Planning; General Business; Immigration & Naturalization; Insurance; Intellectual Property; Land Use and Real Estate; and Taxation. We have a number of attorneys who have been recognized as Best Lawyers and Super Lawyers in Hawaii for a number of years. For more information about our firm and our capabilities, and the benefits of its membership in Meritas, please visit www.hawaiilawyer.com or call me at 531-8031, ext. 621.



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Legal Alert is published periodically by Damon Key Leong Kupchak Hastert to inform clients of legal matters of general interest. It is not intended to provide legal advice or opinion.

Attorneys in the News

Chris Kubota was featured in the November issue of the Japanese language LIGHTHOUSE MAGAZINE in their section titled “MY TURNING POINT” – which highlights interviews with local Japanese leaders. The article summarized her bilingual and bicultural background being born and reared in Japan but being raised by a local boy father and Japanese mother. She explained her turning point came when she moved to Hawaii from Japan and interpreted for lawyers. She could not understand how the law was being applied and why justice did not prevail at times. Her curiosity led her to law school and joining Damon Key after graduation. As an attorney, she works on projects with the Judiciary to ensure language access to the Courts.

Ken Kupchak attended the Annual meeting of the American College of Construction Lawyers in Palm Beach in February as a Fellow, it’s the one time he wears a tux. There are 150 Fellows Nationwide—AV rated construction lawyers who not only practice construction law at the highest level, but also contribute to the construction industry and law in other noteworthy ways, such as writing, speaking and serving on industry related committees.

Anna Oshiro and **Mark Murakami** presented a talk to the Contractors Association of Kauai. The 75 members in attendance were brought up to speed on the new developments in CGL insurance policies and coverage for construction defects. The frank discussion focused on the recent Group Builders decision and the various insurance coverage lawsuits filed in response to the Group Builders decision. Most useful to the

participants was Anna’s discussion on practical risk mitigation that contractors (and owners/developers) can take to protect themselves from defects claims in light of their current lack of insurance coverage. Anna and Mark were well received and look forward to their next chance to meet with the Contractors Association of Kauai.

Michelle Shin has been re-elected to the Board of Directors and as Secretary of the Hawaii State Bar Association Real Property and Financial Services Section.

Robert Thomas and **Christi-Anne Kudo Chock** were on the faculty of “Integrating Water Law and Land Use Planning,” a one day conference on the intricacies of Hawaii water law in November. Christi-Anne led a session on “Hawaii Water Rights – Where Culture and the Law Merge,” and Robert spoke about “Water Rights, Property Rights and the Law of Settled Expectations.”

Robert Thomas was on the faculty of the American Law Institute-American Bar Association’s course of study “Eminent Domain and Land Valuation Litigation” in February 2011, in Miami, Florida. He led a session on “*The ‘Social’ Lawyer: New Media Strategies for Marketing Your Eminent Domain Practice*,” about how eminent domain attorneys can use social media for business development. This program brought together the most experienced eminent domain and property attorneys nationwide in a three-day conference, and is held annually.