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Celebrating Frank Damon's 90th

HAWAII 90!!



Cyril Francis Damon, Jr. has come a long, long way in his 90 years of spreading good cheer, ohana and community service.

To his Partners-in-Law here at the firm, Frank is the standard of what a professional, dedicated lawyer can and should be. This standard has become an integral part of our firm's culture. How do we repay him? How could we? No mean feat.



By Kenneth R. Kupchak

We tried with a Frank Damon Roast! Last month, the firm's Directors paid tribute to Frank and his wife Kitty in a private dining room at Morton's, where Frank kept up the repartee with riposte after riposte, parrying our hurled comical rapier thrusts from his illustrious past—a target rich environment—with light saber light ease.

At 90 years, Frank's easy smile, humble and gracious approach to life was on full display, as always... well almost always. You see, Frank has always had a way on inserting the ribald into festive firm gatherings such as this. He still thinks Mike Yoshida's name is "Ron" and questions Matt Evans on who he is and why is he here, all with a shy knowing smile on his face. At least he didn't ask Anna Oshiro to bring him coffee. But perhaps—as Frank doesn't drink coffee—that was not the best example.

Frank's vaunted safe driving has finally come true, as he no longer drives. This, however, didn't stop Charlie Bocken, Denis Leong, and many others from sharing true "near death" experiences with Frank at the wheel. As Matt put it, "as Frank was so very interested in you, he'd more often than not, look you in the eye as he talked to you, as may be proper for an attorney. Except, perhaps, when he is driving and traffic is approaching."

"The Notorious CFD", indeed, to put the hop to the ever hip Frank Damon.



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This being the holiday season we are reminded of the many firm parties past when Frank would appear in full Santa regalia to hand out the gifts. Please recall that Frank co-formed this firm in 1963—way back when—as part of the gift giving, each female in the gathering would primly sit on Santa's lap and whisper in his ear what she wanted for Christmas. This continued for some decades. Santa Frank was ever the courteous gentleman and thusly dispensed his special brand of humor as the most cherished of gifts each year.

Mark Murakami paid high tribute to Frank by praising Frank's many virtues as the most cherished gift that he has bestowed on each of us. Frank's example became the basis of our firm's culture; a culture that drew not only Mark to the firm, but all of us, to his side, then and now. Mark's tribute was a fitting end to a wonderful evening of celebrating Frank Damon's life and times with all of us.

Access to Justice

Each November since 2013, Damon Key attorneys have provided volunteer staffing for the Access to Justice Room at the Honolulu District Court.

In conjunction with the HSBA and the Judiciary's Access to Justice program, Damon Key attorneys provide legal help without cost to those who need legal help but can least afford it. This is a truly rewarding experience for all of us at the firm and a small reflection of how much we strive to give back.

This November, Damon Key was honored by the Hawaii Supreme Court for our work at the Access to Justice Honolulu District Court Self-Help Center.

Below our volunteer attorneys.



What Does A Trump Presidency Mean For Hawaii Contractors?



By Anna H. Oshiro

The 2016 election is over, and the country has a new president-elect. Without getting into the chasms separating the former presidential candidates in terms of policy (and everything else), one thing both of them seemed to agree upon in principle is the need for major investments in infrastructure. For a construction lawyer, this sparks some interest.

Throughout his campaign, Donald Trump called out the need for major infrastructure investments in national roads, highways, and bridges. There is strong support for this argument. Every four years the American Society of Civil Engineers “grades” our country’s infrastructure and issues a report card on highways, parks, bridges, water, dams, and other national infrastructure systems. Our last grade was a D+, with an estimated \$3.2 trillion needed to be invested before the year 2020 in order to repair and upgrade our current systems. While stock market futures plummeted the night of the election as the prospect of a Trump presidency began to take shape, Wall Street since recovered and has made surprising gains since the election. Why? Because Mr. Trump campaigned on the prospect of a one trillion dollar investment in public infrastructure. Put into context, this would be nearly ten times the \$105 billion infrastructure component of the American Recovery and Reinvestment Act of 2009, and the sum alone would eclipse the \$831 billion dollars in tax credits, health care investments, and other costs making up the entirety of the recovery act. Anticipating the possibility of investments on this scale, shares of Caterpillar stocks rose 11% in just two days following election night.

However, closer review of Mr. Trump’s infrastructure policy reveals little intent to invest public dollars anywhere near the sums cited in stump speeches. Rather, according to the policy outlined on his campaign website, Mr. Trump intends to “support investments” in infrastructure: “NAM estimates a “ten-year funding gap” of approximately \$1 trillion. The Trump Infrastructure Plan is aimed at achieving a target of investment to fill this gap. NAM also found that \$8 billion in infrastructure tax credits would support \$226 billion in infrastructure investment over 10 years. Innovative financing programs also provide a 10-to-1 return on investment.” Translated, that appears to indicate that the Trump plan for infrastructure is to invite private developers to fund construction through

offering tax credits and “innovating offering tax credits and “innovating financing.” Of course, private construction will require that the developer make a profit healthy enough to be an incentive to go forward, which will increase the cost of the construction and with it the new highway and bridge tolls to be imposed on current drivers – in effect, a “flat tax” imposed on drivers who use the nation’s public infrastructure. All of this makes the future prospect of a bold new infrastructure investment somewhat murky, if not outright doubtful. However, Mr. Trump does have a supportive Congress to work with, and the democrats have already signaled an interest in working with him on infrastructure efforts. It is still possible that a compromise bill may pass which combines public private partnerships with monetary investments in infrastructure from the federal side.

What all of this means to Hawaii contractors is unclear, but based upon what has been suggested to date, it is likely that any infrastructure development arising out of the Trump “target of investment” plan will be in highly populated areas with a greater rate of return on private dollar investments. This means small communities with failing infrastructure will not be the recipient of such investments. Contractors seeking a piece of this pie here in Hawaii need to start lobbying for clear public/private partnership provisions under state law (which do not currently exist), so that they can hope to participate in any public/private infrastructure proposals put forward by a Trump administration. Current Hawaii public procurement laws do not provide for private development of public roadways or infrastructure, but rather requires that construction projects be competitively let through the public procurement process.

For more information on this article, please call Anna at 531-8031 ext 601, or email her at aho@hawaiilawyer.com.



Eyes on the Hawaii Tax Appeals Court: Will the Residential “A” Tax Classification Withstand Constitutional Scrutiny?



By Veronica A. Nordyke

Nobody likes paying taxes, but they are a crucial part of life. Over the past several years, the Hawaii Tax Appeals Court has decided several seminal cases that delineate the constitutional bounds of tax law and impact the tax revenue raised by the counties and the State. This article assesses the Tax Court’s most recent case, in which Tax Court Judge Gary Chang initially deemed Honolulu’s Residential “A” real property tax classification unconstitutional and then, upon hearing further arguments, held the tax to be constitutional.

The Honolulu City Council adopted the Residential “A” tax classification in 2013. It applies to properties valued at \$1,000,000 or more that do not have a homeowner exemption – about 8,800 properties. The result: property taxes on those parcels were raised from \$3.50 to \$6.00 dollars per \$1,000 of the net taxable assessed value; a 71% increase. This increase amounted to approximately \$39 million additional in tax revenue for the City and County of Honolulu each year.

Twenty property owners contested the new classification and sued the City. They argued that the City exceeded its authority by creating two classifications of residential property based solely on the value of the property, which violate the Equal Protection Clause and Commerce Clause of the U.S. Constitution. In response, the City argued that residential tax classifications are permissible under the law, that there is rational basis for the classification and therefore, deference should be given to the City Council’s policy decisions.

On October 17, 2016, in an oral decision, Tax Court Judge Gary Chang concurred with the property owners’ rationale and ruled the Residential “A” tax classification unconstitutional. In a surprise turn, on December 23, 2016, Judge Chang heard additional arguments and orally reversed his prior ruling. As we wait to see if the property owners appeal, we can reflect on our own tax assessments and take away a few valuable lessons from the case.

First, this case highlights an important aspect of the tax appeal process – if you think you are entitled to a refund, appeal. Of the 8,800 properties affected, approximately twenty property owners challenged the

tax classification. This resulted in an initial favorable decision and, if an appeal is successful, possible tax refunds for the challengers. The remaining property owners may benefit if the law is deemed unconstitutional, but the City argues that they will be ineligible for a refund.

Second, many of the reclassified properties were eligible for tax exemptions but did not take them. These property owners paid more in two areas: first, they paid more than required under the law before the ordinance was enacted and second, they faced an additional 71% increase in property taxes based upon the new classification.

The Residential “A” tax classification affects a significant number of property owners and has resulted in a substantial increase in their tax liability. The Tax Court case provides an important lesson for all taxpayers: be vigilant and get guidance on local, state, and federal tax decisions because the next decision could affect your property, your purchases, and your wallet. I’ll follow up if this case goes to the Court of Appeals or further.



**For more information on this article, please call Veronica at 531-8031 ext 624
or email her at van@hawaiilawyer.com.**

Damon Key Welcomes Veronica Nordyke

New Associate Joins the Firm's Trial and Appellate Litigation, Arbitration & Mediation Practice Group

Veronica, known as Nica by most, received her law degree from the University of Hawaii's William S. Richardson School of Law this past May. While attending law school she was a research associate for the Environmental Law Program, a staff writer for the University of Hawaii Law Review, and a two-time member of the International Environmental Law Moot Court Team. Last spring, she and her teammate went on to win the National Championships of the International Environmental Law Moot Court Competition and also won best memorial for their written brief.

"During high school, I was a competitive swimmer. As part of the swim team I learned the importance of working together, and learned that I loved the energy of competition. Joining the International Environmental Law Moot Court Team during law school allowed me to not only learn more about the law, but also to engage in the team-building, competitive atmosphere I enjoyed."

During Veronica's first summer of law school she served as a legal extern for the Honolulu office of the National Oceanic and Atmospheric Administration preparing legal memoranda, evaluating documents for compliance with environmental statutes, and drafting enforcement penalties under the Marine Mammal Protection Act and National Marine Sanctuaries Act. During her second summer, she transitioned her focus toward private practice and was a Summer Associate with Damon Key Leong Kupchak Hastert.

When asked about the change of direction from environmental law to private civil practice she smiled and responded, "I didn't want to focus my learning to one area of the law quite so early on in my career. I think I can best serve clients by having experience in litigation and many areas of the law. I'm greatly enjoying learning and working alongside the talented attorneys at Damon Key Leong Kupchak Hastert."

In her free time she loves to be outside - swimming, surfing, hiking, and running. She believes that balance is key to success. "Being outside helps me to clear my mind and to stay in shape so I can better focus while I'm at work."

She is a graduate of Punahou School class of 2008 and earned her Bachelor of Arts in Environmental Studies *cum laude* from University of San Diego in 2012. During her time in San Diego she interned for San Diego Coastkeeper and worked as a project manager for Climate Education Partners. She currently resides in Manoa.



What Does A Trump Presidency Mean For Family Law?

In January 2017 Donald Trump will become the President of the United States, and Americans and the world are waiting to see what changes are coming to our lives during the next four years. While most of us cannot affect US foreign policy, international trade negotiations, or the federal budget, we all can expect changes in our families and in our personal relationships in 2017—and some of those changes and the options available to us will be a direct result of the policy and statutory changes coming from Washington, DC.

For example, if the Affordable Care Act (also known as “Obamacare” or the “ACA”), is substantially amended (or repealed), divorcing spouses can be expected to request alimony to pay for private health insurance premiums since there will no longer be access to health insurance through the tax supported health care exchanges and many former spouses will not have access to employer group health insurance plans either independently or via their ex-spouse. Post-divorce responsibility for long term care insurance premiums is also a negotiable issue in divorce cases. Losing health insurance after divorce is a very common practical financial dilemma. The Kaiser Family Foundation has estimated that 27% of adult Americans under the age of 65 have health conditions that would likely leave them uninsurable if they applied for individual coverage under the practices in effect prior to the passage of the ACA in 2010.

Further, if the ACA is repealed, adult children (in college or otherwise), will no longer be allowed to remain on their parents’ health insurance until age 26 as has been the case since 2010 when the ACA was passed. Should parents elect to financially burden themselves to help these young adults with health insurance like divorcing parents can elect to pay for their children’s college educations? Without a new Hawaii statute, it is unlikely the courts will require this coverage.

President-elect Trump has indicated he will retain the



By Judith A. Schevtchuk

ACA’s provision making it unlawful to deny coverage based on a pre-existing condition. This provision of the ACA has allowed Americans with cancer, diabetes, leukemia, mental illness and other chronic conditions to obtain medical insurance. If that changes, the issue must be anticipated in divorce financial planning.

Life Transitions

Some of you may be getting married or moving in with your significant other. Others may have already had children, purchased property jointly, co-signed loans or acquired other joint debts without getting married and are considering dis-connecting from some of these obligations and you are wondering what your rights and responsibilities will be to your former business and/or life partner.

Some of you may have decided that your marriage is no longer personally rewarding and you are considering divorce but you are worried about health insurance coverage, other financial repercussions, or raising children cooperatively—or all of the above and more.

Some of you have finished the soul-searching stage and are considering severing your legal relationship through divorce to give you a fresh start as a single person in 2017. Will that involve a move to the mainland? What’s involved in relocating with minor children when the other parent stays in Hawaii? What say do the children have in these decisions?

Some of you must decide what legal steps, (such as a guardianship), are on the horizon to protect keiki, elderly or incapacitated family members from abuse or neglect when parents or spouses are unable to do so because of substance abuse or cognitive impairment.

All of you need to understand your rights and responsibilities to your children and former spouse/partner. These rights and responsibilities apply under Hawaii law whether you are in a traditional male-female marriage or a same-sex marriage.



The Damon Key Family Law Practice Group stands ready to provide you with a private, confidential consultation to discuss your particular situation. Please call my Legal Assistant, Leah Corpuz at 531-8031ext 645, or email me at jas@hawaiiattorney.com.

Damon Key at the International Court of Justice

ROBERT THOMAS SPOKE AT THE BRIGHAM-KANNER PROPERTY RIGHTS CONFERENCE IN THE HAGUE

Every year, the William and Mary Law School's Property Rights Project awards the Brigham-Kanner Property Rights Prize to a scholar or lawyer for a lifetime of work devoted to studying and furthering the importance of property law and property rights. Named in honor of groundbreaking eminent domain lawyer Toby Prince Brigham and law professor Gideon Kanner, past winners of the Prize are some of the biggest names in legal academia and the property bar, and include Richard Epstein, James Ely, Michael Berger, and Carol Rose.

To award the Prize, William and Mary sponsors the annual Brigham-Kanner Property Rights Conference, usually held at the school's Williamsburg, Virginia campus in October. But this year—as in 2011, when the conference was held in Beijing—it sometimes shifts to an international venue. In October the conference was held at the International Court of Justice—also known as the Peace Palace—in The Hague, Netherlands.

The location was particularly appropriate. The Hague, because of the number of international courts located there, is also known as the “International city of peace and justice.” And, this year the Brigham-Kanner Prize was awarded to Peruvian economist Hernando de Soto, the author of *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, and *The Other Path: The Economic Answer to Terrorism*, influential books analyzing how property rights are the keys to Third World prosperity and the fight against terrorism. Finally, The Hague was also the home of the famous Reformation-era property law philosopher Hugo Grotius, and the Conference was co-sponsored by the Grotius Center of International Legal Studies at the University of Leiden.

Damon Key lawyer Robert Thomas spoke on two topics at the Conference, “Property’s Rule in the Fundamental Political Structure of Nations,” and “Defining and Protecting Property Rights in Intangible Assets.” In the first session, he spoke about how Hawaii’s experience in moving from a propertyless system, to one based on fee simple absolute, to one based on regulatory power, may hold lessons for the rest of the world. In the second, he focused on how elements of the fledgling “sharing economy”—services like Uber and AirBnB, for example—are being treated by traditional property law.

The faculty was comprised of U.S. and international legal scholars and lawyers, and in the keynote address, Mr. de Soto spoke about how something as simple as a system of regular land titling (something we don’t think about too much in western legal systems) plays an important role in developing economies.



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A D V E R T I S I N G M A T E R I A L

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

E. Kumau Pineda-Akiona recently became the Vice-Chair of non-profit Ho'okāko'o Corporation. He also participated in the fifth annual Launa 'Ike at Kamehameha Schools Kapālama campus where alumni return to share their knowledge with over 1,300 students grades 9-11.

Clare M. Hanusz was interviewed by Hawaii News Now, KITV 4 and KHON 2 regarding the 2016 presidential election and possible impacts on immigration law. She was also interviewed on ThinkTech Hawaii, discussing immigration issues and the presidential election.

Greg W. Kugle and **Mark M. Murakami** presented their annual update of significant national and Hawaii court decisions in land use and related topics to the Hawaii State Bar Association's Real Property Section.

Mark M. Murakami and **Robert H. Thomas** are on the faculty of the American Law Institute-CLE annual *Eminent Domain and Land Valuation Litigation and Condemnation 101 Conference* in San Diego in January 2017. The Conference is the 34th annual national gathering of eminent domain attorneys, property owners, appraisers, and other professionals who focus on condemnation law. Robert is also co-planning chair of the conference.

Robert H. Thomas has been elected Chair-Elect for the American Bar Association's Section of State and Local Government. He will lead the 10,000 member section in 2017-2018.