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Coming Full Circle: Mark Murakami Receives Law School Honor

On Friday, December 6, 2019, Damon Key attorney Mark M. Murakami was recognized by the University of Hawaii's William S. Richardson School of Law as its "Dean's Alumnus of the Year." Mark accepted the honor at the school's 16th Annual All Class Reunion.

Mark was the valedictorian of the law school's class of 1999. "After joining us in 2005, Mark was a rising star from the moment he arrived at the firm, and his success is a direct reflection of the quality legal education he received from the Richardson School of Law," said Damon Key Vice President Michael Yoshida. "For Mark to be awarded this distinction is both fitting and inspiring. We congratulate him and look forward to his continued leadership at Damon Key."

After a demanding and noteworthy stint on Coast Guard ships on the West Coast, Mark excelled at the Law School, receiving numerous academic awards, including the Dean's Scholar and the Porter Scholastic Award (twice); awards for highest grade in Property I, Torts I, Contracts I, Corporations, and Professional Responsibility; the Kono Award for Academic Achievement; the Phi Delta Phi Professional Responsibility Award; and the HSBA Real Property and Financial Services Section Award. He also served as Articles Editor of the University of Hawaii Law Review.

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The proud alumni of the University of Hawaii's William S. Richardson School of Law.

Kim and Mark Murakami

Mark maintains his connection to the Law School, serving as a panelist for “real world of lawyering” discussions and teaching law classes. As a member of the firm’s hiring committee, he also has the pleasure of interviewing and hiring well-qualified Richardson students and graduates.

“When you think of the alumni of the Richardson School of Law, you see Supreme Court justices, judges, law firm partners, elected officials and hundreds of attorneys dedicated to the practice of law, in all its forms. Being selected among all those worthy graduates is humbling,” said Mark. “I graduated twenty years ago and would go back to law school in a heartbeat. I fondly remember my time there and consider myself fortunate to have been able to attend. The faculty, staff, and my classmates made my law school experience rewarding and I value the relationships made at the school to this day,” he added. “Of course, the best part of my time in law school was meeting (and eventually marrying) my Constitutional Law II classmate, Kim. Kim has been by my side for the past twenty-one years and we take joy in our two children, Tyler and Kyra.”

Today, Mark practices in the firm’s Dispute Resolution, Real Estate and Construction, and Business and Commercial Law practice groups. He focuses on complex commercial disputes, eminent domain, land use and litigation, and probate and trust litigation. He has appeared in all federal and states courts in Hawaii, most of the administrative boards and commissions, and is licensed in the U.S. Supreme Court, Ninth Circuit Court of Appeals and Court of Federal Claims. Mark has been consistently selected by his peers to the Super Lawyers and Best Lawyers in America lists.

Mark has continued his military service as a Captain in the U.S. Coast Guard Reserve. A graduate of the U.S. Coast Guard Academy in New London, Connecticut, he served for 13 years on active duty before joining the U.S. Coast Guard Reserve the same year that he joined the firm. During his time on active duty, he served on three different Coast Guard cutters, including command of a patrol boat in California. He spent four years assigned to the Fourteenth Coast Guard District Legal Office. Over the years, Mark has been awarded numerous medals for his distinguished service.

Mark was born on Maui and raised in Kailua. He is a graduate of Kailua High School and was active in the Castle Performing Arts Center. He currently serves as President of I’m A Bright Kid Foundation, a non-profit organization dedicated to the performing arts and education. He has served on the boards of other non-profit organizations, is a pro bono arbitrator for the Judiciary, and handles several cases on a pro bono basis.

When Mark reflects on his time in law school, he admires the “singularity of purpose to learn the law” that was evident among such a diverse group of students. “Progressive to conservative, kamaaina to malihini, we gathered in classrooms together for three years to learn how to think like lawyers and how to become them. Many of my classmates have moved on to new adventures outside the law, including business, government and family. I cherish my time spent at that school with my wonderful classmates. When we see each other in court or on the street, we always smile and give the knowing local-style eyebrow lift,” added Mark, with a sense of pride and deep gratitude. “I went to the perfect law school for me and I am perpetually grateful for the education I received there, for the professors who shared their wisdom with me, and for the opportunities and network I gained.”

Five Extraordinary Days in Tokyo

Christine Kubota Attends Sokuirei-Seiden-No-Gi

On Tuesday, October 22, 2019, Damon Key Director Christine Kubota was among 2,000 distinguished guests who personally witnessed the Sokuirei-Seiden-No-Gi, the official enthronement proclamation ceremony for His Majesty Emperor Naruhito. She sat among kings, queens and foreign dignitaries in Japan's Imperial Palace to watch history in the making, as Japan formally announced to the world its 126th Emperor. During her five-day trip to Japan, she also attended Prime Minister Abe's Banquet in Commemoration of the Enthronement and a Post Enthronement Banquet with the Imperial family.

Chris, born and reared in Japan, was one of two people from Hawaii selected to attend the festivities and one of seven representatives of Japanese-American ancestry from the U.S. Hawaii's own Governor David Y. Ige was also in attendance. "I truly thank the Japanese American community in Hawaii for this opportunity to visit with their Highnesses and to share this moment with other Nikkei representatives from around the world," said Chris.

During the momentous week, uniformed police officers helped to guard the Imperial Palace and nearby hotels housing dignitaries. There were guests from over 130 countries worldwide staying at hotels all over Tokyo.

"On the day of the Sokuirei-Seiden-No-Gi, the most sacred of events, we eagerly took our seats at the Imperial Palace after a two-hour long, orderly process that started with a bus ride. As the coverings of each of the thrones slowly opened, their Majesties Emperor Naruhito and Empress Masako appeared seated on their respective thrones. They looked so regal and grand," recalled Chris. Among the key messages of the Emperor's brief remarks was his pledge to uphold his responsibility as the symbol of the State and for the unity of the people of Japan while wishing for happiness of the people and peace of the world. "The message was powerful yet heartwarming," she added.

During the ceremony, a congratulatory message from Prime Minister Abe was followed by three cheers of BANZAI for the Emperor. "We often celebrate with the Banzai cheer in Hawaii but this one brought goose bumps on my arms as we raised our hands praising the Emperor 'Tenno Heika Banzai.' It was



At the Ministry of Foreign Affairs waiting to be picked up for the ceremony is Indonesia representative, Governor David Ige, Argentinian representative, Christine Kubota and Lori Matsukawa of Seattle, Washington.

a very intense, symbolic ceremony for the world to see," recalled Chris.

The Banquet in Commemoration of the Enthronement was hosted by Prime Minister Abe on the following evening. It featured spectacular entertainment of Kyogen, Kabuki, and Bunraku performances, as well as the amazing synchronized service of a five-course meal to 900 guests. The Post Enthronement Banquet, a formal luncheon with the Imperial family and around 400 guests, took place at the Imperial Palace on Friday. Their Highnesses the Emperor and Empress joined guests at the head of all tables. His Highness the Emperor addressed the guests, gagaku musicians entertained and a "kanpai toast" rounded out the magnificent event.

Before leaving Japan, Chris was also able to visit JICA (Japan International Cooperation Agency) in Yokohama and study the history behind the emigration of the Japanese to the Americas. "There is so much depth and meaning to their stories, and I was proud to be representing the Japanese Americans of Hawaii in Japan," said Chris.

Chris' leadership in the Japanese community here in Hawaii spans decades and includes serving as past board chair of the Honolulu Japanese Chamber of Commerce, United Japanese Society of Hawaii and co-chair of the 150th Anniversary of the Gannenmono Celebration. She currently serves as Chair of the Pan Pacific Festival Advisory Committee, director of the Hiroshima Kenjinkai and Hawaii Aloha Life Enrichment Association. She is a member of the Board of Governors and the Immediate Past Chair of the Japanese Cultural Center of Hawaii.



1. The beautiful thrones that travelled to the palace from Kyoto. 2. Nikkei delegates from around the world took a photo after the Prime Minister's Banquet at the New Otani Hotel. 3. Christine at the residence of John Young, Charge D'Affaires, Embassy of the United States of America with the other U.S. representatives.

Casey T. Miyashiro Joins Damon Key as Associate

For Casey T. Miyashiro, the idea of becoming an attorney had been floating around in his head from a young age. The seeds were initially planted by teachers and friends who thought the fit would be ideal given his demeanor and passion for academics. In time, those nudges led Casey, who always enjoyed using his skills to help people, to pursue a career in law. A recent graduate of the University of Hawaii, William S. Richardson School of Law, *cum laude*, Casey is the firm's newest Associate. He practices in our Insurance Coverage Litigation; Business and Commercial Law; Real Estate, Land Use, & Eminent Domain; and Condominium & Community Association Law practice groups.

While in his second year in law school, Casey joined the University of Hawaii Law Review as a Staff Editor and was selected to serve as Managing Editor a year later. He received CALI Excellence for the Future Awards, given for the highest score achieved in each class, in Civil Procedure I, Lawyering Fundamentals II, and Real Estate Development and Finance. He also received the Frank Boas Award for Best Pacific-Asian Law Second-Year Seminar paper, titled "Locked Up Abroad: Migrant Domestic Workers in Taiwan." Casey was a member of Phi Delta Phi and Advocates for Public Interest Law, and served as a Law School Ambassador. He was a teaching assistant in Lawyering Fundamentals, a summer Extern for Judge Karen T. Nakasone of the First Circuit Court and, in 2018, a Summer Associate at Damon Key.

"Casey brings to the firm valuable experiences and proficiencies gained while serving as Managing Editor of the University of Hawaii Law Review," said Damon Key Vice President Michael Yoshida. "The student-run journal is published by Richardson's law students who are able to hone their legal analysis, writing, and editing skills," he added.

According to Casey, like Liam Neeson's character in the movie "Taken," lawyers have a "particular set of skills" that enable them to provide a service to clients that no one else can. "To take what I know and apply it to our clients' situations in order to help them achieve a satisfactory result is very gratifying," said Casey.

While Casey studied law, the school's Jurist-in-Residence program featured U.S. Supreme Court Associate Justice Ruth Bader Ginsburg. Hearing from Justice Ginsburg was an unforgettable experience and reinforced his hopes for a long career in service to others. "I always give maximum effort and strive to produce high-quality work, and I am always looking for ways to grow and learn. I fully intend to strive to be the best lawyer for my clients," he added, undoubtedly inspired by the Justice.

Casey graduated from Moanalua High School, *magna cum laude*. He attended the University of Hawaii at Manoa, where he earned a B.A. in Psychology, with a minor in American Studies, *cum laude*. He lives in Honolulu and, in his spare time, enjoys cooking, running, traveling, and trying new restaurants.



Trial Lawyers' School: Training Damon Key's Next Generation of Courtroom Advocates

At Damon Key, we recognize that the quality of services we offer to our clients is directly correlated to the quality of our legal professionals. With that in mind, and with an eye toward the future, the firm makes a conscious effort to provide opportunities for its lawyers to continue developing and honing their legal skills. One way that Damon Key does this is by sending its litigation associates, at strategic times, to attend a course presented by the National Institute for Trial Advocacy ("NITA"). NITA is a non-profit organization, made up of a network of lawyers, judges, and esteemed advocates across the country, and it is well-renowned in the legal community because it offers a selection of prestigious, rigorous, and interactive course that teach by doing, rather than theory and lectures.



Through their courses, attorneys of all levels of experience are able to sharpen their legal advocacy skills in six practice areas:

- ***Trials***
- ***Depositions***
- ***Brief writing and story-telling***
- ***In-house training***
- ***Public service***
- ***International Law***



Notable past Damon Key participants include Kenneth R. Kupchak, Diane D. Hastert, Gregory W. Kugle, Loren A. Seehase, and most recently, Veronica "Nica" Nordyke.

In October, Nica traveled from Honolulu to Indianapolis, Indiana to attend back-to-back NITA courses on Depositions and Trials. She provides, "NITA is a great organization. While attending NITA's Deposition course I learned tried and true approaches to developing deposition questions. I was then able to jump in and practice these skills by taking and defending depositions with trained actors provided by NITA to give us as close to as real life experience as possible. After that, I attended NITA's Trial course where I was able to gain experience in all aspects of a trial – from drafting an opening statement, conducting direct and cross-examinations on witnesses, to introducing evidence and presenting a persuasive closing statement. The Trial course culminated with a mock trial before a group of real jurors – a highly valuable and an enlightening experience, without the high stakes of a real-life decision. With the Deposition and Trial courses under my belt, I feel much better prepared,

confident, and excited to utilize these skills to better advocate on behalf of our clients as I continue to develop my skills under the guidance of Damon Key's established attorneys."

Echoing Nica's sentiments, named partner Kenneth R. Kupchak provides, "NITA was the best course I ever took. NITA changed the trajectory of my practice for the better. It was there that I honed the fundamentals of case analysis, argument development, direct and cross-examinations, and the art of opening and closing statements. One of the best aspects of the course is the video critiquing, which allows you to see the real time what you are doing and not doing. Sometimes you can be your own best teacher, if you just sit back and critically/dispassionately watch yourself. To this day, I utilize many of the skills I learned at NITA. It is a pleasure to support future generations of Damon Key attorneys in attending NITA courses and to observe the positive transformation and confidence garnered through participation in NITA courses."

Damon Key looks forward to supporting its attorneys' development for many years to come.



On the Importance of a Well-Considered Operating Agreement

By Adam N. Miller



For many entrepreneurs and small business owners that opt for the flexibility and lower formation cost of the limited liability company (“LLC”) structure, the LLC operating agreement is often viewed as merely another piece of boilerplate required to open a business banking account or to obtain startup financing. Indeed, Chapter 428 of the Hawaii Revised Statutes, Hawaii’s Limited Liability Company Act (the “Act”), does not require that an LLC execute an operating agreement.

However, when disagreements arise between LLC members, or when a small business hits a tough stretch financially and requires further capitalization, the role of the operating agreement cannot be overstated. The operating agreement serves as the LLC’s internal governance document, defining the rights and obligations of the company’s members in relation to the company, and significantly, with respect to one another. To that point, it bears emphasizing that the operating agreement is a highly flexible document that should be carefully tailored to reflect the wishes of the LLC’s members.

Stories abound in the restaurant industry of LLC members who hold a minority interest in a restaurant, only to learn of its closing at the same time as the general public. In such instances, the minority members often regret glossing over the terms of the operating agreement, failing to negotiate key provisions, or worse, making an investment on a handshake deal at the outset. Few people starting a business wish to think about how things should play out if the business begins to fail, but a well-negotiated operating agreement may provide key protections to minority members, and clear guidance to all members, when the rose-colored glasses have long been discarded.

The following are just a few of the considerations that LLC members should weigh when discussing their operating agreement with an experienced business attorney.

Manager-managed or member-managed? Will every investor have a right to vote and participate in the LLC’s operations or is it intended that some investors be passive?

Duty of Loyalty. The scope of a member’s duty of loyalty generally means the extent to which members may compete with the business of the LLC. For example, in the case of restaurants, whether or not an LLC member may invest in another restaurant will be governed not by

statute, but by the terms of operating agreement. The Act merely states that a member-managed LLC operating agreement may not “eliminate the duty of loyalty.” Within those broad confines, LLC members should negotiate the extent to which members may pursue other business ventures, especially those that may directly conflict with the LLC’s interests. On the other hand, members of a manager-managed LLC have no duty of loyalty to the LLC or its members unless the operating agreement so provides.

Capital contributions. When an LLC requires further capital for expansion, or to remain solvent, the operating agreement may require that members provide further capital, or conversely, that additional capital contributions shall be purely voluntary, or in some cases, forbidden.

Dissociation, Termination and Dissolution. May a member sell her interests in an LLC without providing a right of first refusal to the LLC or its members? Similarly, LLC members should consider whether a single member should have the right to terminate or dissolve the LLC without notice, or without providing the other members with a buy-sell option or right of first refusal.

Death of a member. Hawaii’s Uniform Transfer-On-Death Security Registration Act permits an LLC member to appoint a beneficiary to whom the member’s interests will transfer on death, so long as the member interests are represented by certificates containing such provisions. The operating agreement will govern whether the LLC may issue such certificates, which allow member interests to transfer outside of the probate process.

Whether you are starting a new LLC and wish to draft an operating agreement that suits the specific needs of your business and its members, or you have an existing operating agreement and wish to review its contents to determine whether certain provisions would benefit from an update, Damon Key is ready to assist with all your business needs.

For more information on this article, please call Adam at 531-8031 or email him at anm@hawaiilawyer.com.



Cash for Gift Cards

By Casey T. Miyashiro



In his 1963 classic, “It’s the Most Wonderful Time of the Year,” singer Andy Williams references several quintessential items associated with the holidays: parties, marshmallows, caroling, and loved ones who are near. But in today’s world, a new item has become synonymous with the holiday season: gift cards. Love them or hate them, you are bound to receive more than a few of them this year. But perhaps the worst part about receiving gift cards is having piles of them littering your home with useless balances of \$2.12, \$1.19, or \$0.27. Thankfully – depending on your point-of-view – the 2019 Legislature of the State of Hawaii has provided a solution to this problem by passing Act 236, which requires merchants to redeem for cash any gift card with a balance of less than \$5.00. Act 236 amends existing Hawaii Revised Statutes (“HRS”) Section 481B-13, which governs gift certificates (gift cards). This law will go into effect on January 1, 2020.

What Consumers Should Consider


If you’re a consumer, you may want to sing “Joy to the World!” upon hearing this news, but there is at least one flaw that you may wish to consider: minors having access to cash. The law does not restrict redemption to adults, so minors can take gift cards and redeem them for cash. Albeit each gift card redeemed will only be for a few dollars at most, if a minor has access to a bunch of gift cards, these few dollars can add up. Minors can then take this cash and do whatever they want with it. Gift cards, once thought of as a safe alternative to cash, may now be a very risky gift. Parents should be vigilant and hold on to any gift cards given to their children. Aunties, uncles, grandparents, you may want to consider other gift options – perhaps we should relive the 60’s and gift savings bonds again?

What Business Owners Should Consider

If you’re a business owner, there are several things that you should consider. First, if you have never read HRS Section 481B-13, you may be shocked to learn that regardless of the expiration that you provided, all plastic gift cards must be honored for a minimum of 5 years from the date of issuance. What’s worse is that if you completely neglected to print an expiration date either on the card or on the sales receipt that went along with the card, HRS Section 481B-13(b) says that the gift card is treated as “valid in perpetuity” – “super gift cards,” if you will. Thus, under Act 236, all plastic gift cards that: (a) have not yet expired, (b) were issued within the past 5 years, or (c) have no expiration date, with a balance of less than \$5.00 may be redeemed for cash. We recommend taking a look at your business records to determine how many gift cards are outstanding that meet these descriptions and budget accordingly.

Second, if you or your employees either: (a) refuse to honor the full balance of gift cards issued within the past 5 years or that have no expiration date; or (b) refuse to redeem qualifying gift cards with a balance of less than \$5.00 for cash, HRS Section 481B-13(e) states that these acts amount to an “unfair or deceptive act or practice,” which carries hefty monetary penalties. It is important that you train your employees to comply with all provisions of HRS Section 481B-13.

If you have any further questions or if someone files an ‘Unfair or Deceptive Act or Practice’ claim against your business, please contact us immediately.



Gift Cards were first introduced by Neiman Marcus in 1994 but didn’t become popular until Blockbuster (remember them?) first began to mass-market them a few years later.

For more information on this article, please call Casey at 531-8031 or email him at ctm@hawaiiilawyer.com.

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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

Christine A. Kubota and **Megumi Honami** served as faculty at the 56th Annual Hawaii Tax Institute Japan-US Alliance Program speaking about trust and probate issues to professionals from Japan and the US mainland.



Mark M. Murakami and **Tred R. Eyerly** spoke about the Thirty Meter Telescope and Floods, Volcanoes and Climate Change at the 2019 Hawaii State Bar Convention.



Robert H. Thomas serves as The Joseph T. Waldo Visiting Chair in Property Rights Law at the William & Mary Law School in Williamsburg, Virginia. Robert and students in his Eminent Domain & Property Rights course recently visited the U.S. Supreme Court to attend oral arguments in a Clean Water Act case involving Maui groundwater.