

# HARMON BROWN

## Protecting Family Assets from Coast to Coast

by Edward McClelland

Four times a year—in January, April, July, and October—Harmon Brown makes a trip most lawyers would envy. He boards a plane for Honolulu and checks into the Prince Hotel for two weeks. Brown, a trusts, wills and estates lawyer with **Schiff Hardin LLP**, divides his practice between the shores of Lake Michigan and the surf of the South Pacific. He's licensed to practice law in both Illinois and Hawaii and has about 500 clients in each state.

"I get no sympathy from people in January and April when it's either gray or snowy or cold here," Brown chuckles. "In July, people are indifferent. October's Bears season."

Brown began the unusual bi-state, bi-climate practice in the 1980s. A former Schiff Hardin partner was lecturing at Chaminade University's tax institute and asked Brown along to answer questions. That was followed by a tax seminar for Bank of Hawaii. In 1990, Brown began to work directly with local lawyers and accountants. Five years later, he passed the Hawaii bar.

His visits to Hawaii are far from vacations, though. Brown tries to cram in 60 or 70 meetings on every trip. He plots out his appointments meticulously on a sheet of paper that looks as crowded as a TV schedule. His only recreation on the islands is a round of golf on Sunday at 6:45 in the morning.

"I don't have any time for swimming," Brown says. "And I've never tried surfing. I was dissuaded by *Jaws*."

Robert Poiani, a trust officer with the Bank of Hawaii, guides clients with assets of more than \$10 million to Brown. It's valuable to have an attorney come to Hawaii from a major metropolitan area, where estates tend to be larger—and the work ethic more intense than on the laid-back islands.

"When you come to Hawaii, I think you bring a little more experience working with the wealthier clients and estate planning," Poiani says. "His turnaround time is phenomenal in preparing documents. He's got more of a research pool in Chicago, and the mentality of New York, L.A., Chicago is that clients expect things done more quickly."

### Another Member of the Family

Brown, 55, spent plenty of time on Pacific beaches when he was growing up in southern California. He went to UCLA for both his undergrad and law school studies. How did he



end up in Chicago? His seatmate in contracts in his first year, Art Radke, was from Milwaukee. Between their second and third years of law school, Brown worked in San Diego, while Radke spent the summer interning at Isham, Lincoln and Beal. When the students returned to L.A., Radke convinced Brown that Chicago was a better place to practice law.

"It was one of those things where he said, 'You ought to interview in Chicago.' And I said, 'Chicago?'"

Brown had never even seen a snowfall, but he agreed to give Chicago a try. His parents figured he'd tire of the winters after a few years, then return to California. But he met a girl from Wisconsin who didn't like the idea of

moving to L.A. They settled in Oak Park, where they raised a son who just started medical school at Northwestern and a daughter who is attending Illinois Wesleyan.

At Isham—the storied firm founded by Abe's son Robert Todd Lincoln—Brown dabbled in labor work but ultimately was drawn to trusts, wills and estates.

"It's really a general practice," Brown says of his attraction to the work. "It lets you work with people, but deal with a broad variety of topics, so if you're involved with a business owner, you'll get involved with issues of buy/sell agreements, the structure of the business. How do you transition management or the interest in the business to somebody

else? With real estate, it would be involved with how do you organize affairs to protect people from liability as well as how do you pass it on? It allows you to deal with people on a variety of levels, and it is really something, as you've worked with families, then you become sort of a trusted adviser; you're almost like another member of the family, helping them work through problems."

As a trusted family counselor, Brown is often invited to weddings and, in Hawaii, luaus.

"Harmon remembers the names of your kids," says David A. Milberg, a colleague at Schiff Hardin. "He always asks as they go through school, and he knows. He actually pays attention. It's wonderful to have him as a colleague."

Brown left Isham in 1985 moved to Schiff Hardin, where he occupies an office on the 72th floor of the Willis Tower. Typically, he arrives at 7 a.m. Because his practice is split between two states five time zones apart, he spends the morning calling Illinois clients and his afternoons on the phone with Hawaii.

Schiff Hardin is one of the few firms still emphasizing trusts, wills and estates, with more than 20 lawyers focusing on that practice. There's a perception, he says, that litigation attorneys can bill more hours and make more money for a firm. It's hard to crank out as many hours on estate planning, since Brown might work on 15 to 20 cases in the course of a day. While the practice is viewed as "not as intense" litigation, it suits Brown's easy-going, self-possessed personality.

"There are people who thrive on being in court and arguing about stuff, and I early on discovered that wasn't my forte, so I enjoy the planning and the ability to get people to work together," he says.

## The Guy Who Reads the Will

Never is that more important than in planning an estate. A plan that some children see as unfair can lead to years of litigation and ruin family relationships forever.

It's a familiar scene in movies and TV dramas: A lawyer, sitting behind an oaken desk, reading a will while family members listen breathlessly, wondering whether they're about to become millionaires—or whether they've been forgotten by an eccentric grandfather.

In real life, Brown fills that role.

"I would be the guy who reads the will," Brown says.

In real life, a will-reading is seldom as dramatic as it's portrayed on film. In most cases, there are no surprises. When there are, they tend to be pleasant ones. Brown remembers a case in which a grandfather left his grandson a car collection the two had worked on

together. The young man was thrilled, and the entire family agreed he deserved it.

To minimize family friction, Brown urges his clients to sit down with their children to discuss how the assets will be divvied up.

"Typically, what happens more and more is people are using living trusts during their lifetime, and so there's oftentimes more involvement especially as people are getting ill at the end, where kids have been active, or spouses have been active with a plan, so there's not this huge surprise at the end," Brown says. "Oh, I got a dollar and somebody else got more."

That doesn't mean there aren't conflicts. Brown handled a multi-million dollar will in which a child who had stayed in Illinois got the family house, while two siblings who moved away were given cash, stocks, and bonds. The out-of-state siblings felt cheated and demanded a more equitable split. After several years—and hundreds of thousands of dollars in attorney fees—an agreement was reached. The children had long been estranged, and with their parents gone, they felt free to go at each others' throats.

How is the family getting along now that the will has been settled?

"There won't be an exchange of holiday cards," Brown deadpans.

In another case, parents had made gifts to their children during their lifetimes and tried to equalize later. The son got an unimproved property, while the daughter received a house.

"The one who got the more valuable property thought that they should just be able to keep that and split everything else equally," Brown said. "What it turned out was there were issues that were kept below the surface while the parents were living, and the kids just hadn't gotten along for years and years, so as soon as the parents were gone, this was the reason for them to argue about that. Ultimately, we ended up doing the equalization, but it was hundreds of thousands of dollars later."

Family disputes are inevitably more bitter than business lawsuits, Brown says. Some people are willing to spend whatever it takes to keep money out of a sibling's hands. The will becomes a battleground for long-simmering family rivalries.

"First, they'll nod their head and understand," Brown says, describing the process. "Then they'll talk to a spouse or somebody else, and then they'll be upset, and it'll sort of fall apart from there. We've been on the other side where, without that explanation, kids have sued and said, 'We don't think that's really what Mom intended or Dad intended.' When that happens, the thing about the litigation is you've got a fixed pool of assets, and typically, everybody gets represented, and the attorney fees get paid out of the pool of assets, so the longer it goes, the more you're shrinking the pool."

## Watching the Inheritance Tax Issue

The 2000s have been a golden age for passing on assets to the next generation. The Bush Administration tried to abolish the federal estate tax but could never get 60 votes in the Senate. It did raise the exemption to \$3.5 million, after which assets were taxed at 45 percent. In 2010, there will be no estate tax. So will that be a good year to die?

"Somebody called and asked that question, and I said, 'That would really be a pyrrhic victory,'" Brown said. "One of the jokes for many people is stay out of Oregon, so you avoid the assisted suicides. There are better ways to plan than encouraging that."

After 2010, the estate tax is scheduled to return to its old level: a \$1 million exemption, followed by a 55 percent rate of taxing assets. Brown doubts it will return to that level. Everyone agrees the exemption needs to be continually adjusted for inflation. Otherwise, it becomes problematic for a family with one large asset, such as a \$4 million house. At the same time, the government needs money to pay for Social Security and health care reform.

"I'm guessing they'll hit some kind of resolution," he says. "The Democrats, even during the Bush Administration, said, 'Let's pick a number and stop talking about this,' and their number had been \$3.5 to \$5 million. I'm guessing, with the deflation that's occurred during the last couple of years, that they'll probably stay maybe at three-and-a-half, or some level in there, but I don't think they'll let it go back to a million dollars. That's probably too low at this point."

The fact is, only the top 1 percent of families have to worry about the estate tax, which was first implemented during the Progressive Era to prevent families such as the Rockefellers, Vanderbilts, and Astors from becoming hereditary, self-perpetuating aristocracies.

"The avowed purpose of the estate tax is really to avoid some of the accumulation of wealth," Brown says. "You don't want the wealthy families being able to amass empires and pass that on. There was a social policy that was kind of behind this, and I think that's lost some of the bite, although, again, we may see more of that with the current administration."

Brown counts among his clients the 1 percent who will have to pay. Brown is an expert at helping wealthy families minimize estate taxes by putting assets into family limited partnerships, grantor retained annuity trusts, and defective grantor trusts. He's also an advocate of parents gifting wealth to their children during their lifetimes and helps wealthy families plan charitable giving.

"There are certain things about him that make

him good or unique,” says Frances Lui-Kwan, a Honolulu accountant who works with Brown. “The advantage is because he comes quarterly, it’s almost like we have these quarterly deadlines. He works very hard when he’s here. When he’s here, he makes me work harder.”

Lui-Kwan runs a “boutique-type” CPA firm for wealthy individuals and regularly recommends Brown to her clients.

“We’re talking about planning for people who have \$50 million or \$100 million that they would like to transfer to the next generation with a minimum of tax,” Lui-Kwan says.

## Talking About Death

Nonetheless, even middle-class families need to write wills. There are three phases of life at which families should think about wills. First, when a couple gets married and has children, for guardianship purposes. The will should specify who takes care of the children. Second stage, as a couple accumulates wealth and has children in high school and college. This will involves more tax planning. Finally, around retirement, when the couple looks at transitioning wealth to the next generation.

A will is an admission of mortality, so it can be difficult to get people to sit down and fill one out. At the end of a life, the undertaker takes care of your body, the preacher takes care of your soul, and the lawyer takes care of your money. But if you don’t write a will, the state will write one for you.

“People hate talking about dying to begin with, so then you start going, ‘Well, what if your wife is gone? What if your children are gone? Where would you like it to go and how?’ You’ll have people who will sit down with you to discuss their plan, and we’ll put together drafts of a plan, and they won’t deal with it, and then usually what happens is, they’re going on vacation. ‘You know, we really should have something signed. Remember that stuff you sent to us?’”

Brown has been with some families for nearly 30 years. The fact is, he’s closer to the end of his career than the beginning. Some people worry that their estate lawyer will die before they do. But Schiff Hardin has plenty of lawyers ready to take over after Brown retires.

“One of the advantages of a larger firm is that you don’t have the concern of someone closing their practice and then, ‘What happened to my documents?’” he says. “So we have attorneys from retired status all the way down to second- and third-year associates, so there’s continuity with what’s going on.”

Like their clients, estate lawyers have to prepare for what happens after they’re gone. ■