

CONVERSATION WITH AN EXPERT: LARRY KATZENSTEIN

This is the first in a series of interviews between Rajiv S. Khanna, principle of The Law Offices of Rajiv Khanna, and leading practitioners across the country designed to provide personal and professional insights into various areas of the law.



LAWRENCE P. KATZENSTEIN is a partner at Thompson Coburn. He is a nationally known authority on exempt organizations and planned giving, and a frequent speaker around the country to professional groups. The primary focuses of his practice are representation of wealthy individuals in estate and philanthropic planning and serving as outside counsel to exempt organizations nationwide.

He is a member of the board of the American Council on Gift Annuities and has served several terms as a member of the advisory board of the New York University National Center on Philanthropy and the Law. A former chair of the American Bar Association Tax Section Fiduciary Income Tax Committee, he is a fellow of the American College of Trust and Estate Counsel and a member of its Charitable Planning and Fiduciary Income Tax committees.

He was nationally ranked in the 2009-2020 editions of Chambers USA for Wealth Management. He appears annually in several American Law Institute estate planning programs and has spoken at many other national tax institutes, including the Notre Dame Tax Institute, the University of Miami Heckerling Estate Planning Institute, and the Southern Federal Tax Institute. Larry has served as an adjunct professor at the Washington University School of Law where he has taught both estate and gift taxation and fiduciary income taxation.

Larry is the co-author of the Bloomberg Tax Management Portfolio Charitable Remainder Trusts, Charitable Gift Annuities, and Pooled Income Funds. Larry is also the creator of Tiger Tables actuarial software, which is widely used by tax lawyers and accountants as well as the Internal Revenue Service, and has testified in United States Tax Court on actuarial issues.

He received his undergraduate education at Washington University in St. Louis and his law degree from Harvard.

RAJIV: How did you happen to fall into tax law?

LARRY: I guess because I enjoyed the course in law school, much to my surprise. I had signed up the first year for a course called “Accounting for Lawyers.” And it was so boring. Back then, a tax law course was required, or at least extremely strongly encouraged. I thought that was going to be really boring, too. I was surprised how interesting it was. For example, the beginning of a tax law course is always, “What is income?” And we discussed cases like whether, if you embezzle income from your employer, is it taxable income? That went to the Supreme Court several times before they decided the answer, and it’s actually a close call, but the question was, “How can you be taxed on something that does not belong to you?” The court finally decided it is income, which is a problem when the person who got embezzled from tries to get the money back, and there’s a chunk

of tax taken out of it. Then we discussed cases like, “If you find buried treasure in your backyard, is that income?” So, it didn’t deal with accounting. It dealt with concepts, and I’ve always liked puzzles. And the Internal Revenue Code is a fascinating puzzle of interlocking pieces that don’t quite fit perfectly.

So the entire trajectory of your career was set with just one course?

Well, no. After that, I had other courses too. I took the estate planning course and the core corporate tax course and other courses too. I was always interested in other things, like constitutional law. And my practice is really a lot different from most people who do what I do. A part of my practice is representing estate planning clients and dealing with the estate and gift tax. But the other part of my practice, which is equal in size, deals with charitable giving. So exempt organization issues come up pretty often. I

represent planned giving programs and there are a lot of complicated issues that come up in giving money to charity. So, that's probably about half my practice—representing both charities and philanthropists in the tax law of charitable giving, which is very complicated. [Internal Revenue Code] section 170 goes on for pages, and pages, and pages.

Would it be fair to say that as a tax lawyer, you probably read more than most lawyers do?

Yeah. I like to read. You have to, because the regulations and rulings, and the IRS's policies are always in flux. And then new cases come up all the time and the courts don't always agree on what a certain Code provision means.

So, you could actually have various shades of law depending upon which federal circuit you're in?

Yes. And if there's a major conflict, then either the Supreme Court, Congress, or the IRS has to clarify what was meant.

What does the IRS do when they have conflicting holdings from two different circuits?

Well, the Internal Revenue Service does have regulations that give their interpretation of the law. And under the *Chevron* doctrine, the courts generally give deference to the IRS interpretation, but that doctrine has been under some attack.

Basically, the way the courts are looking at it now is, unless there's a clear ambiguity, there is deference. Especially in an area like tax law, you can't expect the courts of appeals to really be experts. This area is so technical. And I think deference is probably warranted. I mean, they're the ones who are the experts in tax law. And I do think that the IRS doesn't try to just interpret the tax law to benefit the government. I think they're pretty fair about how they interpret the law.

What would you like to tell people that is unique about your area?

I'm a child of the sixties. We all want to save the world. And I like helping charities. It's very satisfying, you know, to walk through a university campus and know how a particular building was funded. And I like that in the estate planning part of our practice a lot of what we do is almost social work or psychology. We listen to people talk very frankly about the problems with their children and other family issues. Helping people work through those things is fascinating, and sometimes troubling.

I'll give you an example of a very typical kind of problem. People own a business and they have two children. One is active in the business and one's not. How do you deal with that? The one who is in the business, running the business, certainly doesn't want a 50 percent co-owner who's not contributing to the business. That's a very common kind of problem. So is the question of dealing with children who are spendthrifts. So is working with donors to charities, because they all have different views of things like how much control they want to have.

The kinds of things that we do differently now than we used to is also pretty interesting. For example, after things like the Enron crisis and after Bernie Madoff and the Sacklers, it is pretty common to put provisions in gift agreements that the charity can do things like take the [donor's] name off the building if the name could later become a source of embarrassment. That kind of thing, which is important now, we never used to worry about.

We've seen that happen quite a few times in the past few years. Here's another interesting one. We also now—and we never did this when I started—put a provision in gift agreements that after 50 years, or some other period of time, the charity can take the name off because the building may need to be renovated. And you want a new donor who wants to name the building. There was a really interesting example of that that was reported in the [New York] Times, Avery Fisher Hall at Lincoln Center.... [I]t was built in the 1960s and decades later needed lots of renovation, a total redo, which they're doing now. And David Geffen said, I'll give you a hundred million dollars, but I want my name on the building.

And they went back to the Fisher family. They said, wait a minute, this was a perpetual deal we had. And so Lincoln Center raised \$15 million to pay off the Fisher family to get the name released.

There are people inside the area of expertise who know things that people outside do not. And that's part of the reason I wanted to get your input. So if you have any advice to give a general business practitioner or a litigator, what would be your advice to a lawyer who treads where angels fear to tread?

I would say knowing what you don't know. And there's no such thing as a simple will anymore. People who do real estate shouldn't be writing wills. And I don't do real estate.

Tax law is complicated. And even if the client is small, you can make mistakes because you don't know what you're doing.

If you know what you don't know, it's probably better to just make a phone call to a colleague who knows what they're doing and get their preliminary input. And then, if possible, bring them in to look at the work.

I'll give you a simple example. I've seen so many wills written by people who don't know what they're doing that say, "I leave it to my children or in equal shares per stirpes."

What is per stirpes?

That means "by the root." So if I have two children, and one has one child and one has two children, per stirpes distribution would require that each child receive what they would have gotten from their parents if everyone had died in the right order. So one child would receive 50 percent. The other two children get 25 percent each. If you didn't want that, it would have to say equal shares per capita.

Ascertaining whether the client wants per stirpes or per capita depends on how you ask the question. If I said, for example, "What amount do you want your grandchildren to end up with? If we ask, do you

want this to be determined by the chance of who dies first?" And if they say, "of course not," well, then you would do a per stirpes. On the other hand, if you ask, "If neither of your children was living, would you want to treat your grandchildren equally?" Most people would say yes.

Excellent. Any war stories that you want to share? Something that tripped you up when you were starting out or something that you did that you feel was remarkable, and you would like to share with the legal world?

I guess the most important thing is the work on large charitable gifts to major charitable organizations. Some donors are easy to work with. Some are not so easy to work with. But they all are trying to do good things.

Another point to remember: Don't assume that other states have laws that are similar to yours. As an example, every state but Pennsylvania treats grantor trusts just like the federal government does. In other words, it's ignored for income tax purposes. Pennsylvania doesn't even allow putting the real estate in a revocable trust to avoid probate. You better know whether there's a real estate transfer tax in a particular state. And if there is, maybe you can avoid it by putting the real estate in an LLC. Maybe you can't. We just did a bunch of real estate transfers for a client with some vacation property in another state. And we hired local counsel. There were so many rules there that were different from other states'.

Would it also be unethical to comment about another state's law if you're not admitted there?

Not necessarily. You can't open an office and practice in every state, and you have to be able to do that to some extent.

What would your advice be to young lawyers who want to become tax practitioners—how to get into it, how to get good at it, how to get a job in it?

Well, I think I would advise anyone who is in law school, graduated from law school, or has been out for a while who really wants to go into this area to get a master's degree in taxation from a really good program. NYU's master's in taxation program is really excellent. Georgetown and the University of Florida are excellent and there are other good ones as well. Not only will you learn a lot, it may help you get a job.

So that advice would help law students who want to become tax practitioners—they would be well advised to look for a master's degree in tax?

I think so. They may want to be out for a couple of years and then go back and do it if they could afford to. NYU's is a one-year program, but it's really terrific, and they've got a lot of really good adjunct professors in the New York area who teach there and then very good permanent faculty.

NYU also has a National Center on Philanthropy and the Law, which is not really tax oriented, but it deals with a broad range of the exempt organization issues.

Let's talk a little bit about your interests outside the practice of law. What is it that excites you? And I know of at least two: music and programming. Tell us about those.

I got interested in programming really because I fell in love with computers. I got my first PC in 1985 and I decided I wanted to learn how to program it—just because I thought it'd be fun. I had this new tool and I didn't think it'd be useful. I just thought it'd be fun. I tried to write programs to find prime numbers and that kind of stuff, not very useful. Then, I guess, I saw an actuarial formula in the regulations under section 170 for computing the remainder interest in a personal residence given to charity; you have to take into account the depreciable life. And I thought, well, that might be interesting to figure out. Then I wondered what's behind those actuarial factors in the IRS tables in publications, 1457, and 58, and 59. So, I got interested in where those numbers came from. I thought it'd be interesting just to try to program it for fun. I had no idea of selling this and I think Jeff

Pennell suggested it because I had mentioned it to him. When the new tables came out in 1989, there was a two-month window when you could use the floating interest rates with the old mortality assumptions. There were no published tables for that. So I had those once I had written this program. So now, you know, I sell it on the internet and most people just download it with a credit card. I probably get as many downloads from accounting firms as from law firms, but it has been fun. And I like playing with the formulas and writing new stuff. I keep adding things to it. It's been just kind of a fun hobby.

And did your programming actually translate into a commercial product?

Yeah. People download it from my web site with a credit card. It's pretty well known in the estate planning community. If you go to Tiger Tables website, www.tigertables.com, you can look at it and see what it does.

What language did you use?

Pascal, the Embarcadero Delphi XE version, which is fairly easy to learn.

Talk about your other interests, Larry.

Well, the other interests I have besides music, which we'll get to, I love to travel and I love hiking. I did a lot of before I got married. I did a lot of travel in remote places. I traveled around Afghanistan by myself and went on a hiking trip to the Mount Everest base camp with a group. I did a lot of that. And then when our daughter was born, we had a little bit of a gap, but we started traveling with her when she was really little. We've been all over the world with her.

What is the most interesting place you've ever visited?

Well, they're all different. Food is a great draw for me. In some places, the food is fantastic. Singapore is amazing for the variety of different cultures and food that all came together there. And, you know, for hygiene, they put them all under a roof where they

could monitor them. The street food is under a roof and just incredible things you'd never find anywhere else. So that was fun. I've been to the Himalayas three times, hiking, including Sikkim, which very few people go to, and then once in the Annapurna region with my wife and daughter, just a few years ago. And then in my younger days, I climbed a few mountains.

And did you say that you went to the Nepal region?

Yes. Just hiking.

Do you usually go through India or Nepal?

Both, but the trips to India have been mostly on the way to Nepal.

All I've seen of India really is New Delhi and Agra and Bharatpur, and Bombay—Mumbai now—just for a day on another trip. I'd like to go back.

My wife doesn't like hot weather. I want to go to South India and Sri Lanka, but I don't know if I'll talk her into that.

Talk about your music hobby. That also sounds very interesting because you're going from extreme left-brain activities to extreme right-brain activities. A great balance there.

I don't consider myself particularly logical or, you know, I wouldn't say I have any mathematical skill at all. I never had any math past high school. I like puzzles and things, but I wouldn't say I'm that good at it. It was more effort than brains.

Which is the literature side – is that left side or right side? Right brain?

I would say right brain by far. I like to read. My father came from Germany in 1936 and he grew up across the street from an opera house. And he was a passionate music lover. So we always had it on in the house. And I really think you have to be exposed to music as a child. It's like language, I think. I really grew up with it and I played piano all through school. I played a piano solo at my kindergarten graduation

and all through college, I went to as many concerts as I could go to—chamber music and symphonic and opera, and it's just always been a great passion of mine. I play piano still.

You also conduct, correct? When did you start doing that?

I guess about 30 years ago. I got interested in conducting just because I wanted to know more about the craft. And we have a fabulous St. Louis Symphony. I've been active with the St. Louis Symphony for many years. I'm on the board and I'm the General Counsel of the Symphony. I became friendly with the assistant conductor of the St. Louis Symphony. In fact, he stayed in our third floor for a while. He gave me a lot of coaching and showed me how to do things. I had always read scores—I was a fluent score reader from high school, probably, or earlier. I collected them and could read them fluently. It came pretty naturally to me, even reading big orchestral scores.

After we had gotten some coaching, I wanted to conduct. So I said, "How about I make a contribution to the Youth Orchestra and you give me 20 minutes of rehearsal?" I did that about three times. The St. Louis Symphony then wanted to hold an auction, so I said, "Why don't you offer as a prize," (for a certain amount of money) "the right to conduct the St. Louis Symphony at a rehearsal?" And they said, "OK". And I arranged to buy it. And I did that and I did Don Juan, Richard Strauss. I did that about three years. And then I asked if I could actually conduct a private concert and I've been doing that ever since. So we invite clients, all of our friends.

Wow. Do you have a recording somewhere that people can reach?

I'm not sure they would want to record them. I wouldn't want them to! I mean, if they're going to have something memorialized, they want it to be perfect—something conducted by a professional with lots of rehearsal time.

That's quite a feat though. Without years of training, you were able to pick up enough to be able to conduct an orchestra. That's quite a big deal.

Oh, then I always pick things that they know or that they've done fairly recently.

And have you played the piano for any of these occasions?

I'm not good enough to play in public.

Yeah. You can either be a lawyer or a pianist. It's not easy being both.

I like to play with other people that I can get to play with me. And I like to play piano, four-hand arrangements. You know, in the 19th century, the way you got to know a new Brahms symphony was you played the piano duet arrangement. And there are a lot of wonderful arrangements for two people at one piano. And so that's fun to play. And I do that a fair amount.

And who are your partners?

Oh, I have very various friends, mostly professional musicians.

I wanted also to ask you about any particular challenges you recall during your professional career that you felt were particularly difficult and you found ways around them or ways to overcome them? Any professional challenges that you would like to share?

I can't think of anything off-hand related to professional challenges. Well, it's always a challenge when they change the law and you have to figure out what to do, but all the clients who have existing documents, that's more of a professional challenge that every estate planning lawyer has. It's not unique to me.

Yeah. That's a blessing and a curse. It's a blessing because it creates work for you each year on an ongoing basis, but it's a curse that you've got to do the work over and over again. Never finished.

Yeah, that's exactly right. I can't think of anything specifically would be very interesting to people that is challenging.

What do you think, Larry, is the best and the worst of your practice? What do you enjoy the most and what do you detest the most?

I think what I enjoy most is meeting people, hearing their life stories, and helping them, learning about their families. The things I like least are the things like billing, tracking hours, and so forth.

Any concluding remarks, anything you would like to add on to what we have talked about?

I'm lucky because so many lawyers don't like what they do. I don't want to retire. I love what I do. Absolutely. I'll be 74 in a few weeks. 🍷