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As Much About Psychology as the Law

LEAH BISHOP ON THE SOFT SIDE OF ESTATE PLANNING

BY MICHAEL ESTRIN
PHOTOGRAPHY BY DUSTIN SNIPES

A CRYSTAL BALL NOT MUCH BIGGER THAN A THUMBNAIL SITS on Leah Bishop's desk. It was a gift from a client who had asked her, in a manner of speaking, to predict the future. Bishop gives estate planning advice, and knowledge of the future would be useful to shed light on, among other things, what Congress might do about the estate tax, whether heirs will use their inheritance responsibly, and if potential charities will honor the spirit of the gift.

In concrete terms, Bishop deals with the complexities of the tax code, the rather esoteric rules that make up a trusts and estates practice, and the law governing exempt organizations like charities. But more than anything, Bishop's job is about counseling her clients through major life decisions that can impact families for generations.

"I help people save a lot of money in taxes," she says, "but a lot of what I do is help my clients through the soft side of planning: How do I pick a trustee? How do I incentivize one type of behavior and disincentivize another? Is it all right not to give my money away?"

None of these questions have easy answers.



LEAH M. BISHOP

- PARTNER AND CO-CHAIR, TAX EXEMPT ORGANIZATIONS: LOEB & LOEB
- ESTATE PLANNING & PROBATE, NON-PROFIT, TAX
- SOUTHERN CALIFORNIA SUPER LAWYERS: 2004–2013; TOP 10: 2010–2012; TOP 100: 2004–2013



“She told me that probate was like doing a Rubik’s Cube inside a soap opera,” Bishop recalls. “That sounded interesting because it had all the complexity and intellectual difficulty of tax law, but a lot of real human drama.”

WITH A B.A. FROM BRANDEIS UNIVERSITY

(summa cum laude, Phi Beta Kappa), a J.D. from Columbia (Law Review) and a clerkship for Judge Edmund Palmieri (U.S. District Court for the Southern District of New York), Leah Bishop entered the job market in the early 1980s with options.

“It was a good time to be a smart female lawyer,” she remembers. “The big firms were mostly male, but there was this urgency to bring in more female attorneys.”

Bishop interviewed with a who’s who of Los Angeles powerhouse firms before accepting an offer in O’Melveny & Myers’ corporate practice.

“I was this young feminist and I was going to break new ground by doing deals,” she recalls.

For a year, she worked as a corporate associate at a big firm. She was miserable.

The trouble wasn’t the workload or the hours. Bishop just didn’t have a passion for corporate law.

Then a friend at O’Melveny suggested a switch to probate—the old name for a trust and estates practice. She balked. She had aced probate law in school, and her professor had even recommended that she pursue that practice. Unfortunately, he added that it was “a good thing for a woman to do.” So much for probate law.

Her friend’s pitch was better.

“She told me that probate was like doing a Rubik’s Cube inside a soap opera,” Bishop recalls. “That sounded interesting because it had all the complexity and intellectual difficulty of tax law, but a lot of real human drama.”

The throwback rule, for example, was designed to ensure that when a trust distributed funds that might be nontaxable that year, the distribution would be “thrown back” to the year it was earned and treated as if it were distributed then. It’s not a topic

most lawyers relish researching. It can be dry and incredibly complex. But it was Bishop’s first Rubik’s Cube.

“Here I had this challenging research assignment in a very esoteric area that a lot of lawyers never even deal with, and it was for a client who was such an interesting character. He lived in the Bahamas and had very complex family relationships,” Bishop says. “I was hooked.”

“Leah didn’t just excel at the four corners of the assignment,” says partner Stuart P. Tobisman. “She really took the time to get a deeper understanding of the client and the whole picture.”

Tobisman subsequently asked Bishop to move from O’Melveny’s main office in downtown Los Angeles to a satellite office in Century City. She weighed the positives and negatives. On the downside, she’d be away from the action at the firm. On the upside, she would get a chance to work on the Edwin W. Pauley estate. Pauley’s various philanthropic endeavors—among them, a sports pavilion at UCLA that still bears his name—would give Bishop a chance to specialize in exempt and charitable organizations, a subset of estate planning that is essential for advising wealthy clients who are keen to leave their fortunes to charity.

“Pauley owned everything from a bowling alley, to oil and gas holdings, and even an interest in the Brown Derby,” Bishop says. “I also learned a lot about philanthropy. Here I wanted to fix the world, and my firm was going to pay me to learn how charities work!”

It was a big assignment for a young associate.

A few years ago, Loeb & Loeb absorbed O’Melveny’s trust and estates practice, and Tobisman says he wears out the carpet walking between his office and Bishop’s. “Leah is always someone I turn to when I

have a difficult question,” he says.

Her corner office has everything you’d expect from a partner at a big Century City firm. From the 20th floor, Bishop can see the deep blue of the Pacific Ocean and the San Gabriel Mountains on a clear day. Her desk occupies half the room, but Bishop does her most challenging work at a thick, round table surrounded by comfortable chairs, with pictures of her husband and two daughters on top. The setting is surprisingly intimate, almost like a kitchen table.

“A lot of what I do is counsel people,” she says. “We don’t do boilerplate documents because we want our work to reflect the real intent of our clients.”

To her clients, the idea that their children might blow a fortune, or even be ruined by their inheritance, is often something to agonize over. It would be easier, of course, if the client kept control of the money. But the tax consequences of holding onto all of their money until death could be a bonanza for the IRS. So how do you cede control for tax purposes but make certain that your heirs don’t squander their fortune or fall victim to unscrupulous spouses or business partners?

“A traditional way to do it is for distributions at specified ages. For example, the estate planning document says the kid gets one-third of the money at 25, one-third at 30, and one-third at 35,” Bishop says. “But I’ve seen way too many situations where the 25-year-old is in rehab, or there’s just something awful going on in their life. ... Or maybe they’re in the Peace Corps and not ready for a large inheritance.”

Bishop’s estate planning documents often put the onus on the child to come to the trustee and get their money.

“Inertia can be a wonderful thing,” she says. “If there’s something really bad going on with the kid when it’s time to withdraw the money, they just don’t show up.”

Using a right of withdrawal in estate planning documents isn't something Bishop's legal training taught her. It's a lesson she learned as a mother. One of her daughters really wanted a limousine to take her and her friends to their high school prom. Bishop agreed to her daughter's request, with one caveat: the kids had to organize everything by a certain date. Her daughter came through—organizing the service, allocating the seats and collecting the money by the deadline.

"I'm always applying my own experiences as a parent to my work and my documents," she says. "Doing this job well is about counseling people through some of the most difficult moments and decisions of their lives, so it really helps to be able to draw on your personal experience—to be able to offer advice, but also empathy."

It also helps to be available.

"Emailing Leah is like playing tennis at the net," says Tobisman. "She responds very quickly."

Millions of dollars, after all, are at stake for her clients. Thanks to recent uncertainty in the tax code, clients are especially concerned. Will the gift tax exemption and the generation-skipping transfer tax drop to \$1 million? Will transfers above the exempted amounts jump from 35 percent to 55 percent?

During much of 2012, Bishop estimates she spoke with clients concerned about changes to the tax code about 10 times a week, adding that the political gamesmanship surrounding the estate tax is the worst that it's ever been. "The uncertainty in the tax code is unconscionable, and it's [caused] people to make some very distorted choices," Bishop says. "That's what Congress doesn't understand—that turning the estate tax into a political football means people can't plan their future or make plans for their children."

Should clients give away their money or bet on Congress? From a tax perspective, the smart move is to give away as much money in trust as possible. But there's a rub. "They can't get the money back and they might need that money in the future, especially if their financial picture changes for the worse," Bishop says.

Then there are the family-owned businesses. Bishop's clients tend to own

privately held businesses worth millions or hundreds of millions of dollars. If they wait until they die to transfer their businesses, the IRS will almost certainly take a hefty chunk.

"A lot of these businesses don't have enough cash to pay the IRS when the founder passes away," she says. "What they do is put their money in trust and have the trust buy an insurance policy to pay that tax."

In 2012, many of Bishop's clients bought insurance policies at the maximum amount allowed for couples under the current transfer tax law—\$10,240,000. But a lot of her clients chose not to take advantage of the 2012 tax opportunities because they believed Congress would fix it. Others, she says, sought permission to keep their money.

"I think a lot of clients just want to hear that it's OK not to give away their money, that it's OK to enjoy their retirement because they worked hard for what they have," she says. "In a lot of ways, tax planning is just as much about psychology as the law."

WHILE SOME OF BISHOP'S CLIENTS

choose not to give away their money, the vast majority seek her out for advice on philanthropy.

"She has a tremendous reputation as a lawyer with expertise in the law of charitable giving," says David D. Watts, a retired O'Melveny partner who now serves as the associate vice president for planned gifts at Children's Hospital Los Angeles, one of Bishop's many charitable clients. "Leah is also incredibly well-known as someone who can counsel a client on how to be a philanthropist, not just the tax advantages of giving money to charity."

In addition to doing extensive speaking for charitable audiences, Bishop donates her time to Public Counsel and the Harriet Buhai Center for Family Law, two Los Angeles-based nonprofits that focus on providing pro bono legal services. It's what you might call indirect work. Bishop advises nonprofits on issues of corporate governance and sometimes represents charities that are the recipients of large, often complicated gifts.

"It's a lot of the same work I do for my clients," she says. "But charities need representation and advice, too."

She adds, "I think we have a duty to repair the world." [N](#)