



EP 145 - The Critical Role of Shareholder Agreements Part 2

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Joanna:

Hi, it's Joanna Oakey here. And welcome back to Talking Law, a podcast proudly brought to you by our commercial legal practice, Aspect Legal. Now today, we are back with Simon, the founder and CEO of the exit advisory group. This episode is part two, about two-part series with him chatting through the ins and outs of shareholder agreements. Last time Simon and I talked about the role shareholder agreements played in helping business owners navigate disagreements.

Joanna:

Today, we talked about the importance of commercial and legal aspects when it comes to shareholder agreements. And why you should be setting a roadmap now to ensure the future of your business can withstand any issues, if they do arise, we also dig into some of Simon's stories in this area, and why it's critical for anyone in business to work with a commercial lawyer when dealing with shareholder agreements, heat templates in this area of law can go really wrong. Now, as we mentioned, in part one, shareholder agreements are not mandatory, but drafting them is actually a critical step that you should take as soon as possible to protect yourself to minimize any issues which may arise later on. This discussion really helps anyone in business to understand the importance of this agreement. And if you happen to be in need of some help with shareholders agreements, be sure to check out the show notes for a direct link to our commercial team who are offering a free 15-minute shareholder consultation. So that's it, sit back, relax, and we hope you enjoy part two of the importance of shareholder agreements with Simon.

Joanna:

It just reminds me of the importance of this combination of commercial and legal, you know, because, you know, the answer is not just a legal agreement, but you need that, you know, it depends on the size, you know, or whatever, as we discussed before, but also, you know, from the commercial perspective, it's about sitting down and working out some of these bigger issues. And that on its own, perhaps, needs a shareholders agreement. Shareholders' Agreement needs that discussion together. We, you know, as advisors, this is sort of the beauty of working together, don't you think?

Simon:

Look? Absolutely. And, you know, before you even get to some of the commercial discussions, and by the way, I should preface this by saying anybody listening to this, who doesn't have a shareholders agreement, it's okay, right, we can, you can get on track. And it's, there are some tools and tips and a process, you can follow here to make sure that you put things in place, and you get on the right track with all this stuff. So but before even I think business owners start talking about commercial goals, there is a little process here of them thinking deeply inside of like, what do I want personally out of this, at the risk of sounding a little bit woo-woo here, Jo, you know, and you've heard me say this, but like, I deeply believe that none of us is just born to do business, right?

Like, we're born to live our life. Business owners should be really thinking hard about what kind of life they want so that they can then use their business as a vehicle to deliver on that promise, your business is an asset, it's there to help you achieve what you want out of this, this existence. So, so having a think about that, and talking to your family and saying, you know, and I mean, you would have heard this, how many business owners do you talk to go, Oh, my God, I don't have enough time I'm missing things with my family, I haven't been able to go on holidays, I haven't been able to

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do this and that, like, there is a there is cause to stop, pause, think about your life and work out actually, what do I want going forward? And then bring those thoughts, those emotions, feelings to the discussion with your business partners and say, Hey, like, I've been thinking about things, and this is kind of really, you know, where I want to go and what I'd like to get out of this, this business venture.

And so, you know, and I think that it can be a bit raw, but it's certainly transparent and a little bit emotional at times. And I think but bringing that honesty to the discussion will go a really long way to helping you and your business partners work out what is important to you as a group. Once you've had those discussions, great, then you can start to put the shareholder's agreement in place to you know, really outline and affirm what you've all kind of agreed or what the intent was.

Joanna:

I love And this is a way of looking at the processes, as you know, as a bigger process, but with a much bigger opportunity to set that roadmap for the future. I love it, Simon.

Simon:

So interesting one, and I've also had people question or ask me about, you know, okay, so we've had this discussion, we've all realized we're aligned with various goals. We want to put a shareholders agreement in place. Do we need some kind of keyman insurance behind this? And I think a lot of people actually, you know, I've had people coming to me saying, Can you explain what that key man insurance stuff is? And so and by the way, if anybody needs help with that, we can certainly introduce you to people who can help you with insurance. But in essence, you're in business, you know, if Jo and I, you and I are in business together, you know, and if I was to be hit by a bus tomorrow if we don't have key man insurance built into our shareholder's agreement, you could find yourself in business with my family. Now, you actually might be much more happy with that. I would probably prefer to work with Shanti than myself. So you know, that could be a good thing for you.

But for most people, they don't want to end up in business with their business partner, spouse, you know, or their family or their son, or whoever it might be. And now recall an example around an automotive business where it was exactly that to two guys' best mates. And the concern was actually, you know, my business partner is having health issues, you know, if something does happen to him, I'm going to be in business with his son, and his son's a drongo. And I don't like him. So, you know, there's no mechanism there, right for him to exit his mate's family, in a logical, reasonable and fair way.

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And so the key man insurance basically said it would pay out that partner in the event of something tragic happening. So, you know, can be a little bit of an investment to have that type of insurance. But geez, you know, what, like, look how much money you're potentially saving.

Because Jo, and I know, you would have seen this, I've seen business partners tear each other apart. I've seen business partners completely destroy value. In fact, and I'll share one more little story while I'm on a roll here, but we're in the middle of a transaction, it was in the I won't say it, let's just say it was in allied health. So an allied health business, it was a quality business, there was a bit of a roll-up going on actually, at the time. And hey, roll-ups as a term if you're not familiar with it.

I think we can do another episode on roll-ups but basically, yeah, absolutely. So there was a large company running around buying lots of companies in a plan to be listed on the exchange. Our clients were offered a for a small business, it was like a four-and-a-half multiple of their EBITDA, which was an excellent offer. And we told them as much like in the normal environment, you're not getting this deal, this is exceptionally good. Take it, let's run with this. And, unfortunately, I mean, we were selling because the two partners hated each other.

Simon:

They had grown to absolutely despise each other. And it had gotten so toxic, that through the negotiations, it descended into chaos for the two. And pretty much right before we close the deal, Jo, one business partner turned around to us and said, Am I allowed to swear on this show? He said I would rather burn this place to the fucking ground than see him get a single dollar out of this business. And so could the deal. And I just sat there. And I just remember being in shock. I've, in fact, I think I'm still in shock over going, how could anybody be so bloody-minded about an asset? Like just you'd rather burn your own money just to hurt somebody else? Like, you know, that person, to be frank needs therapy?

Joanna:

Yeah. And that is the exact reason then while you do need something strong in the background in your shareholder's agreement to be able to deal with instances like that. Now, that's unusual, right? That there can be such bloody mind. But having said that, it happens. And when people get really annoyed with each other like we've got two or three matters on right now, where there's not as extreme as that, in fact, we have one that is as extreme as that and another two that aren't as extreme, but there's still these issues going on. And it's so hard when you look at these things, and you say, you know, some of this stuff was preventable, not necessarily the relationship decline, but the way that is then dealt with and the exit path for the two people involved.

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Simon:

For sure. I might if I can just see if we've got a minute left. I just want to raise one of us small, it's not small. It's a very significant issue. But worth just keeping in mind. You mentioned before about conflict comes out of ambiguity. And, you know, we had another client where that we got

engaged, that he was in a shareholders agreement with two other business partners. The other two had become very friendly and aligned with where they wanted to go and our client was sort of a little bit on the outer. He was older he wanted to exit they didn't want to exit. With the shareholder's agreements, basically, our client had the right to go out and find a buyer for the whole business. And it was a drag-along clause, basically. But because there was some ambiguity in the shareholder's agreement, the other two shareholders had basically thrown down and said, Well, we're gonna go to the courts, and we're going to fight it, because the agreement wasn't clear enough and tight enough for our client to execute it in the intent and the way that it was intended, initially. And so I just think, you know, if you're, even if you've got a shareholders agreement out there, and you're listening to this if you haven't reviewed it in the last year or two, it probably is really worth reaching out to a commercial lawyer like Aspect Legal to say, Can you review this for me, here are some of my concerns.

This is where we're at at the moment. And by the way, it's actually okay, if two years ago, your view on where you were going and your exit plan back then has changed, right? Like, it, you might be thinking differently today than you were a few years ago.

And so, if you want to, you know, and it or if you want, certainly want to process to learn how to think about that you can reach out and I'm very happy to share some info on that, but, but get it reviewed, talk to talk to a lawyer that you can trust and that you know, and preferably one that knows you a little bit too you know, if they don't know you, we'll go and call Aspect Legal and have a chat to them. So they can, you know, get to know you and help you a little bit because I think it's you know, the more you can communicate what's important to you, the better that your lawyers can protect you and that's the job right?

Joanna:

So true. Look, Simon, I just want to say a huge thank you for coming on today. I love your stories. I love chatting with you about this sort of stuff. We could talk I feel for hours about this topic, Simon.

Simon:

Thank goodness, we don't have wine at hand. Hahaha

Joanna:

I know! Hey, there's an idea for another podcast. How can our listeners reach out to you if they're interested in getting a bit of assistance with some of these commercial elements and future planning that you've been talking about?

Simon:

Yeah, look, if people want to email us, just hit us up at ask@exitadvisory.com.au, you can also go to the website exitadvisory.com.au. Hit me up on LinkedIn, Simon Bedard, B E D A R D, so look, I'm very, very accessible. So look, reach out, I'm always happy to make time for a call. And if it's just answering a few questions, I'm very happy to do that.

Joanna:

Simon, as always, thank you so much for being on our podcast. It's been a pleasure.

Simon:

Oh, no, the pleasure is mine, Jo. Thanks again for having me. Cheers.

Joanna:

Well, that's it for this episode of Talking Law. We hope you found this episode useful and insightful. And if you'd like more information about this topic, then head over to our website at talkinglaw.com.au where you'll be able to download a transcript of this episode, as well as any contact details and additional information that we refer to. And if you'd like to get in contact with our guest today in the services they offer, you can go ahead and check out our show notes for those details. And of course, if you're interested to talk to any of our lawyers about anything relating to this topic, then just head over to our website at www.aspectlegal.com.au where you can book immediately a free 15-minute discussion with our Legal Eagles at any time that works for you. Of course, there's also a booking form in our show notes as well.

Joanna:

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