

HOW NOT TO END UP LIKE *KING LEAR*: A FAMILY-BUSINESS SUCCESSION CASE STUDY

Benjamin Means

In previous work, I offered Shakespeare's *King Lear* as a cautionary tale concerning challenges that family-business owners confront when seeking to hand power across generations.¹ Too often, family businesses fail because the current owners failed to plan for the inevitable transition, leaving the younger generation unready for the responsibility. But if *King Lear* dramatizes a worst-case scenario of carelessness, intrigue, and betrayal,² it is also worth considering and drawing lessons from supportive families and enlightened business owners. To that end, this Essay summarizes the "*King Lear* problem" and then contrasts it with the story of a contemporary family farm that has successfully managed a transition from father to daughter.³ As discussed below, Sharp and Sharp Certified Seed provides a model for managing family and business expectations.

¹ See Benjamin Means, *Solving the "King Lear Problem,"* 12 U.C. IRVINE L. REV. 1245 (2022).

² See generally GRANT GORDON & NIGEL NICHOLSON, *FAMILY WARS: STORIES AND INSIGHTS FROM FAMOUS FAMILY BUSINESS FEUDS* (2008); ROGER FRITZ, *WARS OF SUCCESSION: THE BLESSINGS, CURSES AND LESSONS THAT FAMILY-OWNED FIRMS OFFER ANYONE IN BUSINESS* (1997).

³ See, e.g., MARK RUSS FEDERMAN, *RUSS & DAUGHTERS: REFLECTIONS AND RECIPES FROM THE HOUSE THAT HERRING BUILT* (2013). The following case study concerns a former student of mine. I am grateful to her and her family for sharing their experiences and allowing me to include them in this Essay.

I. KING LEAR AS FAILED FAMILY-BUSINESS SUCCESSION⁴

When Shakespeare's King Lear decided to transfer his kingdom to his daughters, he had the absolute power of a monarch but no formal legal institutions he could rely upon. In the modern world, family-business owners have less power but more help; lawyers have lots of ways to achieve their family-business clients' goals. There are, just to name a few, revocable and irrevocable trusts, cross-purchase and entity-purchase agreements, voting and nonvoting stock, partnership and corporate governance structures. In succession planning, therefore, today's family-business owners have far more legal technology at their disposal than a medieval monarch like Lear. The law permits family-business owners to allocate financial and control rights with precision.

Yet, the challenge for incumbent family-business owners involves judgment more than power. Not what can be done, but what should be done. Incumbents must balance the ongoing needs of the venture with family expectations and values that may point in a different direction. On top of all that, incumbents also have to think about what comes next for themselves. Will they be able to take enough money out of the business to enjoy a comfortable life in retirement? There is a reason why family-

⁴ This section provides an informal summary of arguments developed at greater length in a previous article published by the U.C. Irvine Law Review. *See generally* Means, *supra* note 1.

business succession is considered the greatest threat to the survival of family businesses and why so few family businesses remain viable after two generations. Sooner or later, every family-business owner stands in Lear's shoes.

The play illustrates the stakes—Lear handed over the keys to the kingdom to his two eldest daughters and then everything collapsed around his ears. Instead of peace and stability, there was warfare and madness; his daughters murdered each other; and, well, it wasn't much of a retirement. This is the result we want to avoid. To that end, a leading business-law treatise declares that anyone who advises family businesses should keep *King Lear* on their desk right next to “a current copy of the state business organization law” and the Internal Revenue Code.⁵ Likewise, former-Justice Anthony Kennedy tells a story from his days in private practice about how he once used *King Lear* to caution a client about his family-business succession plan.⁶

In short, *King Lear* offers a bracing example of family dysfunction. But what does it mean? What should family-business owners learn from Lear? According to conventional wisdom, Lear's big mistake was giving away control of his kingdom too soon. Once his daughters were in charge,

⁵ LARRY E. RIBSTEIN & ROBERT R. KEATINGE, RIBSTEIN AND KEATINGE ON LIMITED LIABILITY COMPANIES § 18:1 n.1 (2018).

⁶ Matthew Renda, *Kennedy Defends Rule of Law, Europe in Ninth Circuit Speech*, COURTHOUSE NEWS SERV., July 26, 2018.

they did not need him, and so they left him to wander the heath in the middle of a terrible storm. Professor Henrik Hartog of Princeton University calls this the “*King Lear* problem”—people make lifetime transfers of their worldly goods in exchange for care and support in their old age, and then their heirs neglect the bargain.⁷

I have a different interpretation. In fact, I think the standard account of *King Lear* gets it backwards. In my view, the play’s central lesson for family-business owners is to start succession planning as early as possible. Lear’s mistake was not that he acted too soon, but that he waited too long. This is a common failing. The family-business literature describes several dynamics that can cause succession planning to fail: Identity, Role, and Process. Lear illustrates each of them.

Identity. First, there is the issue of identity. Lear couldn’t bear to surrender his title, because that’s who he was: King. Without his kingship, Lear could no longer recognize himself. This is part of what makes him a tragic figure. Like Lear, many family-business owners have a hard time separating their personal identity from the position they occupy. To give up the position may feel like giving up a part of themselves. If no longer the CEO, who are they? What value do they still have in the eyes of the world? What will their status be within the family? And, of course, there

⁷ HENDRIK HARTOG, SOMEDAY ALL THIS WILL BE YOURS: A HISTORY OF INHERITANCE AND OLD AGE 33–34 (2012).

is the fear of death. To leave behind one's working identity is no easy thing. It is perfectly natural that a family-business owner may prefer to delay the inevitable.

Role. A related problem for family-business succession involves roles and role playing. We don't have a playwright to script our lines for us, but we nevertheless have a clear understanding of what is expected of us in most situations. How we are to behave. What sorts of things we ought to say. Our roles are context dependent—are we at work? at home? And they change over time as children become adults, and as junior employees rise through the ranks. In a family-business, role transitions are doubly complicated because they involve family and business relationships. When Lear demands that his daughters perform their intimacy in public as the price of their inheritance, he is confusing the role of daughter with that of prospective monarch. Cordelia's refusal can be read as an insistence on the distinction—that she will not cheapen her love for her father by using it to buy an equity stake in the family business.

Process. In addition to problems of identity and role that may cloud their judgment, family-business owners need to pay attention to the process of succession decisions. Sometimes, a course of action may be reasonable, but it may still fail miserably if the leader has failed to get the necessary buy-in from those who would be expected to implement it. Lear announced what he was going to do with his kingdom; he did not ask his

daughters for their input. As business owners and as parents, those in charge of a family business may not feel obligated to consider, much less accommodate, the next generation's wishes. They, the current owners, have created the wealth and it is theirs to dispense. This can lead to an absence of appropriate process.

There is another reason why parents may shirk the responsibility of creating and following an open process for succession planning—avoiding difficult conversations. If, for example, there are concerns about the relative competence of their children, parents may prefer to pretend that everything will work itself out for the best. This is, in effect, saying “when the time comes, you’ll know what to do,” but a recent *New York Times* article about unexpected business transitions in the wake of a parent’s death shows that it is not necessarily true.⁸ The lack of process leaves heirs unprepared to take on the burdens of the business, gives them no guidance in dividing responsibilities among themselves, and invites a scramble for power.

As described in the next section, the story of Sharp and Sharp Certified Seed reinforces these lessons, but also shows how the challenges of identity, role, and process can be managed more successfully.

⁸ Paul Sullivan, *The Question Some Company Owners Don’t Want to Deal With*, N.Y. TIMES, Feb. 12, 2021.

II. SHARP AND SHARP CERTIFIED SEED

Established as a family farming business in 1947, Sharp and Sharp Certified Seed is a row-crop farm in Allendale, South Carolina. The farm is held as a general partnership and is currently transitioning from Don Sharp, a second-generation owner in his early 70s, to his daughter, Rachael Sharp. Perhaps because she attended law school before joining the family business, Rachael appreciates the importance of a clear process and has insisted on open communications, the involvement of counsel to address tax planning and other considerations in advance, and that the interests of other family members be dealt with beforehand, rather than leaving it to be sorted through later. To his credit, Don has welcomed these suggestions for an orderly process.

A. *Historical Context*

Rachael's paternal great, great grandmother established a farm at the current location, and it was female owned for another two generations. Rachael's great-grandmother died young, when Rachael's grandmother was only six years old. Rachael's great-grandfather had a life estate but was not permitted to diminish the value of the estate. He was not dedicated to farming, however, and later decided to cut timber on the property to make money. Rachael's grandmother sued for injunctive relief and prevailed.

Rachael's grandmother continued the farm until she married. Her husband served in the military during World War II, and the family moved to Texas, allowing the farm to go fallow. After the war, Rachael's grandfather earned a degree at Clemson, and the family returned to the farm. He had no experience farming but had majored in agriculture at Clemson and was successful as a farmer.

Rachael's grandfather started Sharp and Sharp Certified Seed. The second Sharp partner was his son, Don, who joined in the farming work when he was old enough to do so. Rachael's grandmother also worked the farm but was not considered to be a co-owner, notwithstanding the fact that she had brought the property with her into the marriage. Although the farm was a matriarchy in its first generations, the power structure had become patriarchal. Despite her lack of formal status as a paid employee, Rachael's grandmother handled payroll, made hamburgers and sweet tea for employees every day (taking care to pour unsweet tea with a packet of Sweet'N Low taped to the glass for a diabetic employee), and otherwise helped run the farm.⁹ The farm grew soybeans, corn, cotton, peanuts, and wheat.

⁹ See SARAH WHATMORE, FARMING WOMEN: GENDER, WORK AND FAMILY ENTERPRISE 1-4 (1991) (discussing women's behind-the-scenes roles in farming).

B. *The Second Generation*

Don has lived his entire life on the farm, except for when, like his father before him, he attended Clemson University. Don has a sister who does not have an interest in farming. Rachael's grandfather died in 2001, and her grandmother passed away in 2006. The farm was left equally to Don and his sister.¹⁰ In order to continue the farm, Don had to buy her out. However, because the value of the farm is tied up in the property and not in cash flow, there was not enough money available to complete a buyout.

Much like *King Lear*, the children were not consulted about the parents' estate plan. With advance planning, the cash flow issues might have been handled in different ways—perhaps with a life insurance policy. Also, the parents could have spoken with their children about the value of the farm as a part of the family's heritage and their expectations for how it might be preserved. Instead, the siblings were left to hash through the ownership issues after their parents died. It strained their relationship, but the two siblings did reach a compromise that allowed Rachael's father to retain the property.¹¹ Even when a lack of planning creates a risk of conflict, bloodshed (real or metaphorical) is not the only possibility.

¹⁰ See General Warranty Deed on file with author.

¹¹ *Id.* (reporting “a private family settlement agreement . . . to alter the shares they are entitled to . . . as a part of that global settlement and division of the real property of this Estate and Trust.”).

Consequently, Rachael's aunt still owns a significant percentage of the farm's property—about 500 acres—and receives rental payments each year. Rachael's aunt does not have an unrestricted ownership interest in the land. Importantly, Don has a right of first refusal to buy the remaining property, should his sister negotiate a sale outside the family. Also, because the farm's irrigation systems are expensive fixtures, Rachael's aunt's rights are subject to permanent easements to ensure that the farm's operations are not threatened by her ownership interest. Although the family has made it work, the succession strategy (or lack thereof) was not optimal because it saddled the farm with debt and uncertainty and did not maximize value for the passive owner.

The failure to think through the interests of next-generation family members outside the business is not uncommon in businesses with illiquid assets. Sometimes, the family keeps everyone involved as passive owners, but this approach can create predictable conflicts between those who are active and those who are not. Alternatively, to treat their children fairly according to a typical family value system of equal entitlement, parents may plan in advance to harvest cash from a business that can be transitioned separately, or to acquire life insurance policies that may be used to fund a cash payment to children who won't take over the business. Also, parents might prioritize the needs of the business venture and divide their assets unequally. Regardless of the approach the older generation

takes, a lack of communication can create resentment and uncertainty. Rachael noted that the whole issue of the farm split between her father and her aunt remains a “taboo topic.”

C. *The Third Generation*

At present, as a practical matter, Sharp and Sharp Certified Seed is controlled by Don, and it is his intention to transfer the farm to her. The family’s original expectation was that Rachael’s brother would one day take over the farm. Her brother grew up working the farm, driving a tractor, and learning the business. Unfortunately, a serious opioid problem has forced the family to reevaluate that plan. It is not clear that Rachael’s brother has accepted that she will take over the farm. When possible, it is best to include everyone with an interest in the family business in a dialogue about how the transfer to the next generation will be effectuated, but Rachael’s brother is not able to participate constructively in conversations about the future of the farm.

That complication aside, the family is in a good position to make the transition from father to daughter. Rachael’s father already treats her as an equal. For the past five years, Rachael has been a full-time employee. She handles the books and finances, orders chemicals, ships seeds, and generally takes care of logistics. Farming is demanding work, but she enjoys it and feels a responsibility to carry on the farm as a family-owned

business. It is a legacy that has been handed down across generations, and she does not wish to be the one who lets it drop. Rachael recognizes that Don, too, feels a sense of urgency to preserve the farm. He knows that he is growing older. Perhaps for that reason, he sets very high expectations. As Rachael put it, “He tells you once.”

The farm is currently a general partnership and has retained counsel to advise them regarding the transition of business ownership as well as related estate planning issues. Don holds some property in trust, and he has slowly transferred property and business equity to Rachael and to her mother. Currently, Rachael has 30%, Don has 50%, and Rachael’s mother holds the remaining 20%. Pursuant to a Farm Services Agency (“FSA”) program that provides financial incentives for succession planning, Don will transfer 5% each year until Rachael has 50%. The farm’s liabilities are addressed via an insurance policy, but it is likely that the business structure will change and that the general partnership will be replaced with one or more formal business entities.¹²

Unlike Lear, Don has elected not to divide his kingdom but to bequeath it to the heir most capable of preserving it. More significant than the substance of the decision, he has agreed to a process that gives his

¹² See generally DWIGHT DRAKE, BUSINESS PLANNING: CLOSELY HELD ENTERPRISES (4th ed. 2013) (discussing how companies can divide the business into a holding company with multiple subsidiary operating companies).

daughter a voice in how the transition will be effectuated; he has enlisted professional advisors (rather than banishing them); and he has created a transition process that gives Rachael the opportunity to learn the business before he entrusts her with it entirely. Although she recognizes that handling her aunt's interest in the property will be an ongoing challenge, and that her brother's potential expectations regarding the farm may also be a source of tension, Rachael is optimistic about her ability to take over the farm and to preserve it for the future.¹³

The Sharp family's approach to business succession for their 1,000-acre farm presents an instructive contrast to *King Lear*, and, in factually similar circumstances, the farming family that is the subject of Jane Smiley's *Lear*-patterned novel, *A Thousand Acres*. The novel describes the battle for control of a family farm from the perspective of the eldest daughter Ginny.¹⁴ Notably, when one of the daughters, who is a lawyer, has the temerity to ask about her father's succession plans, she is cut out of her inheritance. Rachael Sharp, too, has a legal education, but her contributions were appreciated by her father and not perceived as a sign of disrespect.

¹³ In a recent conversation with me, Rachael noted that it would have been even better to "have started 20 years ago."

¹⁴ See JANE SMILEY, *A THOUSAND ACRES* (2001) (reimagining *Lear* as a farmer named Larry Cook).

Also, unlike the older daughters in *A Thousand Acres*, Rachael has never been limited to her role as a daughter and has, to the contrary, been encouraged to see herself as a partner in the farming business. She and her father communicate openly about business matters, and they separate their relationship as father and daughter from their working relationship. Don has emphasized that there can be no appearance of favoritism—she needs to be at work on time and to stay until the other employees have left. Each year, they take a one-week vacation together and that gives them the opportunity to relate to one another as father and daughter. (It is also the only week each year when her father leaves the farm.)

In order to inherit from their father, the older daughters in Smiley's novel had to take care to present themselves only as daughters and farm wives. In the wake of her father's decision to leave the farm to Ginny and Rose, cutting out Caroline entirely, Ginny reflected on the necessary pretense:

I saw that maybe Caroline had mistaken what we were talking about, and spoken as a lawyer when she should have spoken as a daughter. On the other hand, perhaps she hadn't mistaken anything at all, and had simply spoken as a woman rather than as a daughter. That was something, I realized in a flash, that Rose and I were pretty careful never to do.¹⁵

¹⁵ SMILEY, *supra* note 14, at 21.

That Don has never expected Rachael to act like a daughter rather than a business partner has helped them immensely in navigating the family and business roles that trouble the relationship of father and daughters in *A Thousand Acres* and *King Lear*.

Nor does one need to turn to literature to find troubled relationships that endanger family business succession in farming families. Rachael believes that her family's plan for the farm is unusual in that she and her father have learned to have difficult conversations with each other. In her view, Southern farms are vulnerable because "nobody wants to bring up anything uncomfortable." Rachael speculates that this hesitancy may be a "farm thing" or a "Southern thing" but problems cannot be solved by ignoring them. She is right, of course, but, as the family business academic literature indicates, lack of communication is a far more pervasive issue among family business owners.

In sum, while the business succession has not yet been completed, and it is always possible that the family's plans will change, the prospects for a third generation of Sharp and Sharp Seed are bright. Don "hits the ground running" and expects Rachael to do the same, but he gives her the opportunity to earn his respect and to claim the farm for her own. It is difficult being the only woman farming "within a thirty-mile radius," and there is stress that comes with the job, but Rachael sleeps well at night

because she is comfortable with what she does. Carrying on the legacy of a century-old farm is important to her.

III. CONCLUSION

When I shared a draft of this essay with Rachael, she wanted me to clarify that her business relationship with her father has taken time to build and is still “a work in progress.”¹⁶ Rachael treads lightly when she can because there are several different relationships that must be negotiated—father-daughter; employer-employee; and co-owner. In the beginning, it was “rough.” Her father is, in her words, “stubborn” and can be “hardheaded as all get out.” At first, Don might ask for Rachael’s opinion, but he never took it. Like many business owners, Don was accustomed to making the decisions unilaterally and struggled to give up control. Gradually, though, Rachael has been able to influence farm operations. She has learned that sometimes she needs to “let it soak in a little bit.” For example, she ran the numbers and persuaded Don not to rent additional acres because the risks far outweighed the possible benefits. This ran counter to his general view that bigger is better when it comes to farming. He did not admit that he agreed with her, but when the time came to rent the land, Rachael discovered that he had let it go. Rachael’s analysis was

¹⁶ Interview with Rachel Sharp. (Sept. 14, 2022).

correct, saving the farm a significant sum of money, and that has given her additional credibility with Don. On other issues, such as the use of technology, father and daughter continue to disagree. In short, while the farm will be Rachael's, Don is still in charge today.

