



LEGACY LAW

Protecting the assets in your family tree

Thoughts on *Succession*, the HBO series, by Donal Griffin, Director



I may be the last person on the planet see the TV show *Succession* but, like most who have watched it, I am brimming with the enthusiasm of the discoverer of gold.

No spoiler alert – I have only watched three episodes. In one sitting, mind you, a decent binge. I had thought I was the only succession nerd in our house but it turns out Mrs Legacy Law and everyone who has seen the show is one too. I am moved to jot down my thoughts on what I saw.

Why is it so compelling?

We all have family or people in our lives, with whom we have to compete. Whether it is the last tin tam, suck of the sav or slice of pizza / cake / [insert own battleground], whatever our siblings get, we cannot. It is an intensified share market, a zero sum game. We are brought up in a world of finite resources so we are nice to neighbours but can be horrible to family.

The embarrassment that causes us to apologise to friends with whom we quarrel does not apply to family. The history of them not apologising to us generally vindicates us (in our own minds at least). We know we can behave badly in this environment. Our very identity, let alone our ego, is challenged.

LEGACY LAW PTY LIMITED

t 029188 3980 e dgriffin@legacylaw.com.au a Level 3, 5 Hunter Street Sydney NSW 2000 | GPO Box 568 Sydney NSW 2001 w www.legacylaw.com.au

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The fights have a mixture of emotional and factual basis. Sexual energy is hopefully missing so that joker card is not played. This can be a fight for all the family to watch together!

Entitlement is horrible to watch except when it is yours. Whether people feel they have earned something by action or by suffering in silence or by virtue that they are on the same limb of the family tree as others, they do not mind fighting dirty for what is theirs. Add a pile of money and the stakes are multiplied. We have seen people fight over salt and pepper shakers so to fight over real property or shares is child's play.

Pre-emption rights normal in business arrangements are cast aside for the school yard rule of finder's keepers. In Australia in particular, this resonates where resources are carved up and exploited by those who are first to lay claim to them.

We know the characters from the start and can recognise the players in our own family. Whether it is the manipulative father, isolated second wife, primogeniture first son, middle child with cloyingly ingratiating spouse or loose youngest child, there is something for everyone. It is personal. We care about family business.

As parents, we understand that treating children fairly is not always the same as treating them equally. Some children need more time, energy and money than others. Those who get less view those who get more as Prodigals. My Christianity has lapsed if not collapsed since I was a kid but the story of the Prodigal Son never seemed fair to me: one child has their cake and eats it and gets lauded by their parents more than the quieter dutiful one who stays at home and looks after the parents.

There is also the biblical story of Cain and Abel. Twin brothers bring their sacrifices to impress God; Abel's sacrifice is accepted, but Cain's sacrifice is not. Out of jealousy, Cain takes his brother out into the field and kills him. Because of Cain's sin, he is branded with a mark and sent away.

We can all see the car crash before it happens. "Shirtsleeves to shirtsleeves in three generations" is a phrase with which our wealthier clients are familiar. There is some truth to it. Generation 1 often builds the wealth but treats it as the favourite family member. Generation 2 may not have received the best parenting and can be resentful while enjoying the fruits of that work outside the home. Generation 3 may not have personally seen the hard work and sacrifices that were made by earlier generations. Fractures in the family appear and alliances develop so that not everyone is aligned when assets are being divided up.

Wealth creators can be unusual. Entrepreneurial, driven by their gut and not used to answering to anyone. They can be demanding and truly do not understand others, i.e. inheritors and people who lose the money they have made. Inheritors like the idea of accessing the capital but do not have the muscle memory from building it themselves. The attitude to risk is very different. Some generation 3 inheritors become paralysed by the expectation they will be the ones to lose the family fortune and become extremely risk averse. Some inheritors are risk takers. Either way, it is dramatic and compulsive viewing.

People with a shared history have more baggage and dirty laundry. And they know where it is buried. The success of true crime podcasts has revealed the broad interest in our community

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in the grisliest aspects of life. Succession stories are true, grisly and usually include reprehensible behaviour. Someone we know dies. Of course, we can't stop watching.

What should you do if you are in a Succession drama?

We see a lot of families who are unfortunately embroiled in these stressful scenarios. In fact, every discretionary trust in Australia could be the battleground for such a stoush. You may not think you are a candidate for having to go to Court but it might happen. Let us explain.

If your parents have a discretionary trust, also known as a Family Trust, they may well expect you and your siblings to share it. In our experience, at least one sibling will want to exit this sharing arrangement for various reasons, the main one being that they want to make their own financial decisions with their spouse and not have to discuss same with family. Is there any baggage in your family? Put another way, can you see you and your siblings working easily to share what may be the biggest lump sum you ever receive? If you get on well with your siblings, might any of their spouses make it difficult?

The problems with exiting are that the remaining people usually have to find the funds to pay out the one who wants to leave. That begs the question as to what is a fair valuation of the assets in the trust, who should do the valuation, how easy is it to liquidate assets and what discount should apply to the valuation as the person exiting no longer shares the risk of those assets going down in value (such as in a pandemic, anyone?).

It can be even worse as sometimes not all family members are involved in decision-making. If you are not an executor of a parent's Will, you could be excluded in this way. While those who do make the decisions may consult others and try to reach consensus, there is scope for people to feel disadvantaged. A rogue decision-maker may put more emphasis on the word "discretionary" than the word "trust". You may be horrified to learn that you do not have any share of these trusts. Rather, you have a right to be considered only so you need to be involved in the considering.

People are surprised that trust disputes are not regulated by what is fair or equal but by sometimes old fashioned rules set out in an old trust deed, trust legislation around a century old and numerous even older cases about drawbridges and knights.

We help people manage these disputes in private by assisting them agree terms and document them properly in a Family Agreement. This should be done while the parents are alive as, after that the vested interests can mean it is the lawyers who get to eat the last slices and your neighbours can watch the drama unfold in open Court and in the media.

That brings me back to the world I want to inhabit. I have to finish this note here as the next episodes of *Succession* are drawing me in.

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