

Ethical Rules – Model Rule 1.7

Buzzwords

Informed consent

Reasonably believes

Competent and diligent

Material

Materially limited

Non-consentable

Fundamentally antagonistic

Generally aligned

Mutually advantageous

Non-partisanship

Potentially adverse

Directly adverse

Materially adverse

Significant risk

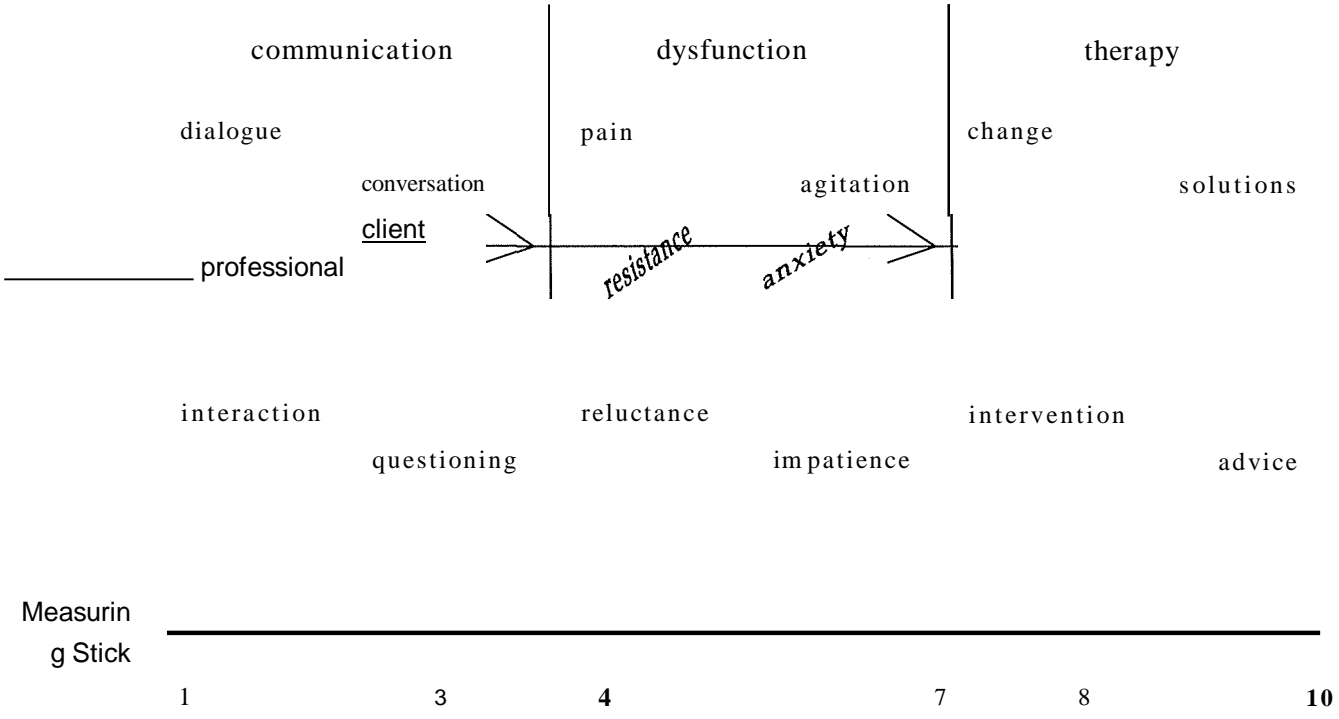
Confirmed in writing

Substantially related

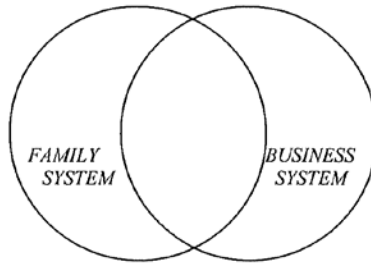
Adjust a relationship

Multiple representatives

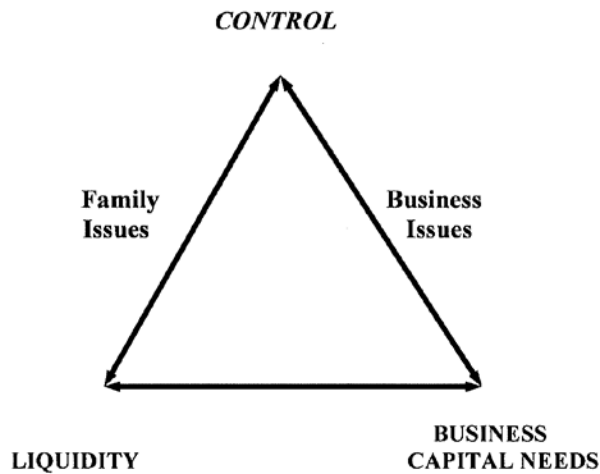
PROCESS BOUNDARIES I



How Far Can a Particular Professional Take the Client Relationship?

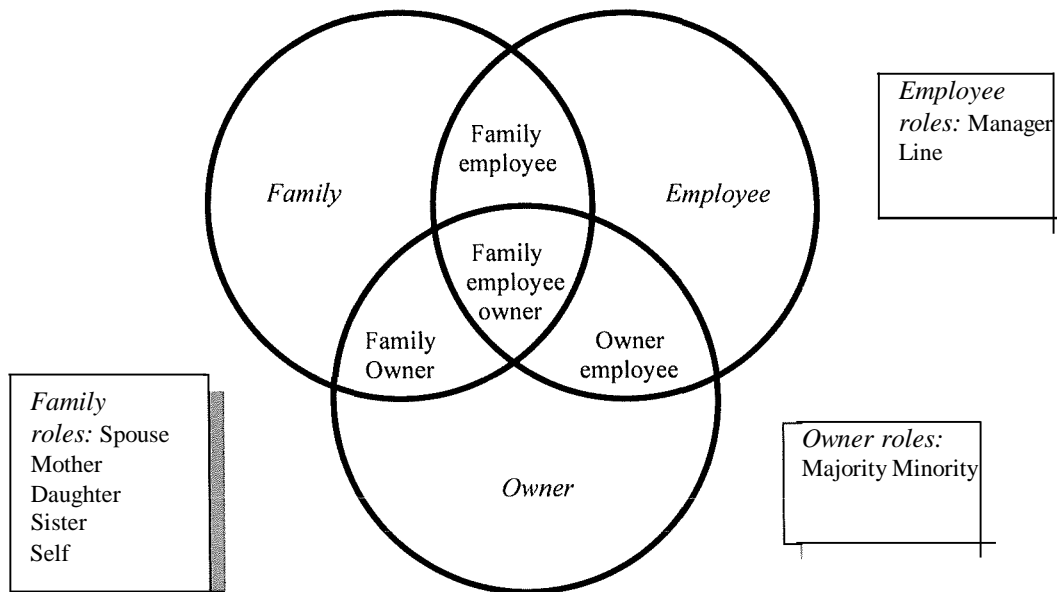


Although many issues remain clearly identified with the family or the business, most critical problems occur in the area that overlaps the two systems. Communication to determine the true source of conflict is the initial challenge that must be met before resolution is possible.¹



This graph demonstrates the strong desire of the family business owner to retain control of the business enterprise. There are competing needs for liquidity in the family to provide adequate financial security and generous financial resources during retirement years. At the same time, the business, especially a growing and profitable business, has an insatiable appetite for additional capital. The person in control dictates whether profits are "harvested" for personal use or, alternatively, retained for the growth of the business enterprise. This graph explains the natural conflict between the older generation seeking financial security in later years and the next generation of business leaders who are anxious to grow and strengthen the company.

¹ See Tom Huber and Steve Swartz © 1981



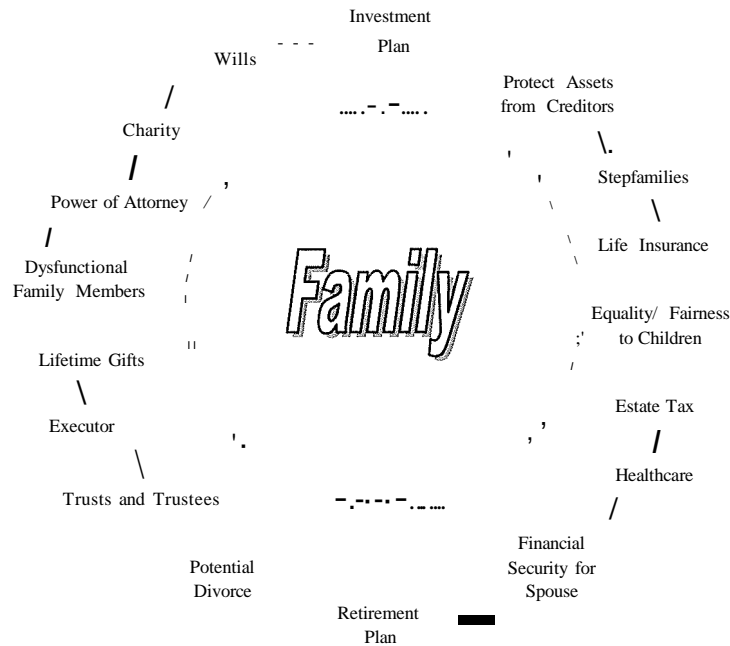
Many family members simultaneously occupy multiple roles within the family and the business. It is important to identify the different possibilities and communicate this information to family members. It is then easier for them to understand the conflicts, lack of objectivity, obscurity, and the different roles played by other family members in each case.³

³ Adapted from Davis and Tagiuri, "Bivalent Attributes of the Family Firm", Family Business Sourcebook, published by Omnigraphics, Inc., Santa Barbara, California (1991, p.63).

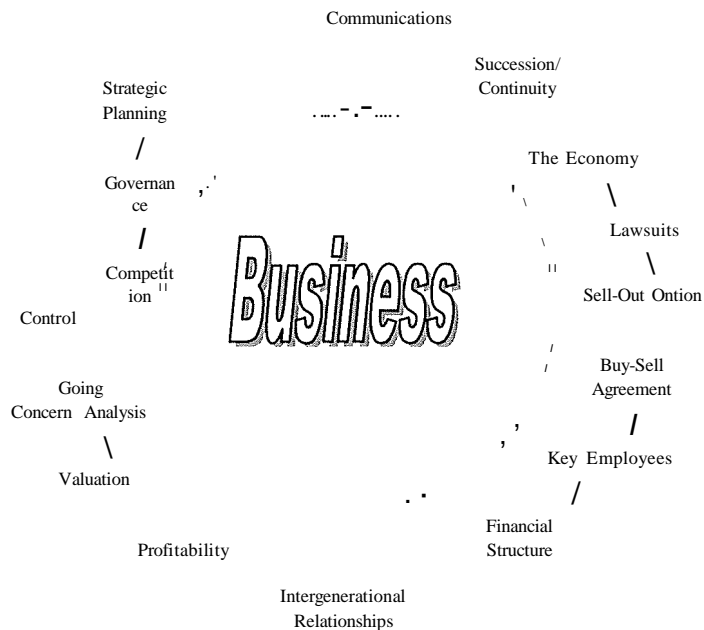
CIRCLES

Family and Business Issues are Interrelated

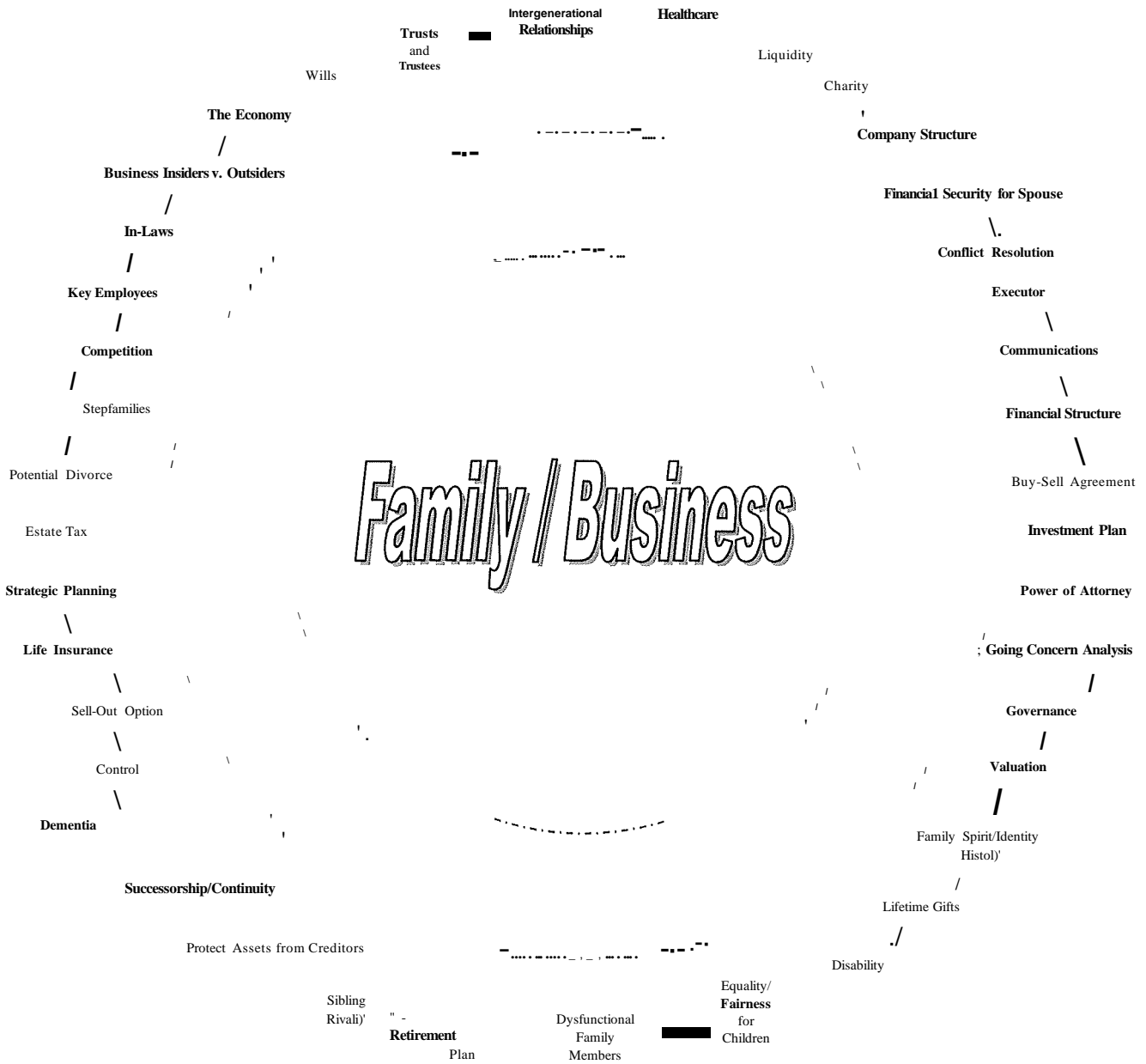
It is much easier to discuss planning by organizing specific issues in a circle. This is a typical list for most families, family business owners or otherwise, in consideration of the estate plan. Once issues are randomly placed in a circle, the starting point for discussion and analysis is irrelevant. Do not attempt to make any decisions until it is time to make a second trip around the circle with family members.



Separately, there is a list of typical issues for a business enterprise (whether family-owned or not).



In the case of a family-owned business, and the planning matters that must be addressed for the family in terms of estate planning, plus planning for the succession and continuity of the business enterprise, all of the issues are inextricably entwined and overlap into one giant circle:



Here are some other factors that may be important:

- a. Dad's legacy—a powerful indicator
- b. Contingencies such as health and disability
- c. Family priority vs. business priority
- d. Successorship issues in the business
- e. Liquidity options vs. sale
- f. Strong and capable in-laws, or not.
- g. No qualified successor from the family in sight
- h. Competing successors
- i. Is a sale the best option
- j. Religion, culture, morality, and similar factors
- k. Philanthropy

- A. Failure can be a success
- B. Failure is inventory
- C. Sue me? – never
- D. Feel the desperation
- E. Be humble
- F. Always be hopeful
- G. No is not an option

Resources

1. Attorneys for Family-Held Businesses
2. ACTEC
3. Family Firm Institute
4. Books and Articles
5. John Ward
6. Leon Danco
7. Ron Aucutt
8. Jerry LeVan
9. Jon Gallo (and wife)
10. Dennis Jaffe
11. Mike Cohn
12. Turney Berry (ACTEC materials)
13. Craig Aronoff (Family Business Consulting Group)
14. Aspen Group