

## SIMON COOK

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Simon specialises in valuing private businesses and quantifying damages.

Simon is a Chartered Accountant Business Valuation Specialist and Forensic Accounting Specialist with Chartered Accountants Australia and New Zealand (CAANZ).

He chairs the CAANZ Business Valuations group for Queensland and is a member of the CAANZ trans-Tasman Business Valuation Committee.

Simon's qualifications include the New York Stern University Advanced Valuations program, the Association of International Certified Public Accountants Accreditation in Business Valuations, the Macquarie University Forensic Accounting Specialisation program, Graduate Diploma in Applied Finance, and the Certified Fraud Examiner qualification.

Prior to founding Lotus Amity, he was a Forensic Accounting and Corporate Finance partner with BDO Australia and led their national forensic practice. He has worked on many cases in a wide range of industries, including assisting in multi-billion-dollar litigation in relation to the Bernie Madoff's \$65bn Ponzi scheme.

Simon has assisted in many legal matters, including breach of contract, shareholder and transaction disputes and matrimonial matters. Forensic services provided include economic damage calculations, business valuations and interpretation of financial information. He has acted as an expert witness, as a shadow expert and assisted in mediations.

### INDUSTRY EXPERIENCE

Hospitality • Retail • Manufacturing • Business Services • Energy & Utilities • Financial Services • Government • Telecommunications • Intellectual Property Trust Companies • Distribution • Professional practices

### SELECTED DISPUTE ENGAGEMENTS

#### [Breach of contract and torts](#)

Negligence and breach of security contract. Breach occurred because the defendant failed to provide the required security services at the time of a fire in the plaintiff's show home. The expert report quantified the business interruption, lost house sales and loss of profit. District Court of Western Australia.

Termination of fishing agreement. The respondents terminated a fishing agreement with the applicants. The expert report quantified the loss of profit for the remainder of the agreement. Federal Court of Australia, Western Australia Registry.

Negligent financial advice and loss of alternative investment opportunities. Allegation that the applicant, an investor, suffered loss due to poor valuation and investment advice from the financial

advisor. The expert report quantified the lost alternative investment opportunities. Federal Court.

Breach of business lease agreement. The respondent breached a restaurant and coffee shop business lease, by denying the applicant access to the property. The expert report further analysed the data on which the other two expert reports were based and reassessed lost earnings in the light of forensic evidence. The Supreme Court of Queensland.

Breach of an employment and sale of business agreement, passing off and injurious falsehood. The respondent sold a facilities management business to the applicant. The respondent subsequently set up in competition in breach of the non-compete clause of both the business sale and employment agreement and made representations that were misleading or deceptive. The expert report quantified the lost sales and loss of profit associated with the varying claims. The Supreme Court of Queensland

Breach of sales contract and negligence. The defendants sold defective transport equipment to the plaintiff. As a result, the plaintiff suffered the loss of customers and loss of profit. The expert report assessed the losses. County Court of Victoria, Commercial Division.

Breach of a company shareholders agreement. The plaintiff alleged the respondent, an ASX company, had breached an agreement to provide the plaintiff with a seat on the company board. The expert report calculated the value attributable to a seat on the board associated with a minority interest in a public company.

Breach of a government telecommunication contract. The expert report calculated the lost profits and value to a mobile phone incumbent due to the government's proposed deregulation of the market and the introduction of competition. Eastern Caribbean Supreme Court.

Breach of warranty. The applicant acquired a retail business and claimed for damages for breach of a warranty in the sale agreement. The vendor provided a warranty that it would disclose all relevant information and misrepresentations were alleged to have been made. A valuation was provided based on the information provided at the time of the transaction to assess the reasonableness of the transaction. Federal Court. Trade Practices.

Breach of a management rights contract. The applicant held the rights to carry out the management role for the body corporate. The body corporate allegedly terminated the contract without cause. A loss of profit report was provided to assess the economic damages suffered by the applicant as a result of the breach. Queensland Civil Administrative Tribunal.

#### Shareholder & transaction disputes

Misleading and deceptive conduct. The applicants acquired the assets and goodwill of a wholesale lighting business. The applicants' alleged the respondents made misleading and deceptive representations, which were relied on by the applicants in entering an agreement for sale of the business. Valuations were provided under different scenarios to assist in quantifying the loss. An examination and detailed analysis of the books and records was carried out to assist the court. Federal Court. Trade Practices (ACL).

Shareholder dispute. Expert Determination. Valuation of an allied health business.

Partner dispute. Valuation of a food wholesaler and retailer to assist partners in a dispute and allow the

partner to fairly exit the business.

Minority oppression. Valuation of an air-conditioning business to assist the minority shareholder claiming damages for oppression.

Family shareholder dispute. Valuation of a vineyard under the terms of the shareholder agreement to assist the exit of the brother.

Earn-out dispute. Interpreting and calculating the earn-outs and profit allocations in accordance with the terms of an agreement under different scenarios.

Minority shareholder dispute. Assisting a minority shareholder in a construction business to extract the maximum share value, considering allegations of manipulation and abuse of the director's loan account. Mediation.

#### Matrimonial matters

Statement of assets. Preparing statement of assets and liabilities for a \$50m estate, including identifying and preparing supporting documents for asset and liability valuations. Family Court of Western Australia.

Tracing of assets. Analysing and concluding on the trail of transactions in relation to an allegation of misappropriation of funds by the husband.

Valuation of an engineering consulting business. Federal Circuit Court of Australia.

Consulting expert, review of a distribution business valuation report. Federal Circuit Court of Australia.

Share portfolio valuation. In relation to the matrimonial pool of assets, valuing a large range of shares and options in low volume traded stocks, with influential holdings. Family Court of Western Australia.

Private business shareholding valuation. In relation to the pool of assets, the valuation of a family owned livestock trucking business.

#### Other matters

Financial records analysis. Analysis of thousands of financial documents and the preparation of court documents substantiating a \$500m claim in relation to a large-scale construction project dispute.

Ownership of asset dispute. Dispute over the ownership of related party assets. Reporting on the actual treatment of assets, what should have been the proper treatment and the implied ownership because of the transactions.

Accounting fraud identification. Investigation into suspicions a bookkeeper might be misappropriating funds from the business. Procedures carried out to detect possible fraud and control weaknesses.

Personal injury claim. The plaintiff suffered an injury at work. Reviewed the settlement offer and tested the assumptions of the offer.

Theft of inventory. Calculating the loss of profit because of allegations of misappropriation of stock by a

manager in a supermarket.

Solvency investigation. Investigation into allegations of impropriety by a service provider to one of the world's largest iron ore producers. Analysis of financial information to assess whether the service provider was solvent and to identify abnormalities.

E-discovery. Assisting in many significant disputes where many (1m+) documents were discovered. Preparing those documents for an e-discovery platform (Relativity) and then searching for, analysing and reviewing relevant documents for the legal team.

Litigation support. Providing lead support to a multi-billion-dollar claim, including quantifying damages, decision tree analysis, project management, indemnity exposure assessment and consideration of experts. Commercial division of the Eastern Caribbean Supreme Court.

### **SELECTED VALUATIONS EXPERIENCE**

Engagements have included valuing the following:

- Wholesale distributor of outdoor leisure products, for a share acquisition
- Accounting practices, for a partner dispute and refinancing purposes
- Corporate advisory business, for restructuring purposes
- Real estate business, to assist in valuing exiting members
- Data compression technology business, to assist in a transaction
- Publication business, to assist in a transaction
- Mortgage broking businesses, for bank finance
- Investment broking business, for bank finance
- Investment management company, for tax purposes
- Intellectual property of a university spin-out, for restructuring
- Electrical distribution business, to assist in a transaction
- Fabrication business, for a potential transaction
- Component distribution business, for a potential transaction
- Car dealerships, for restructuring purposes
- Engineering business, for refinance purposes
- Conferencing business, to assist parties in negotiations
- Drilling businesses, for restructuring and ATO purposes
- Radiology business, per the requirement of the shareholder's agreement
- Legal practice, for valuing the shares of exiting partners
- Jewelry retailer, for a matrimonial dispute
- Supermarkets, for banking finance purposes
- Advertising business, to assist in a transaction
- Piggery, to assist in the transfer of shareholdings and obtaining funding
- Valuing a start-up tech company for capital raising
- Four office real estate practice for a matrimonial matter
- Consumable durables manufacturing business for a potential sale
- Mining electrical engineering business for a bankruptcy matter
- Financial advisory business for tax purposes
- Mining engineering business for a share transfer
- Fabrication business for tax purposes
- Oil & gas equipment service business for a share transfer

- Allied health business for a shareholder dispute
- Infrastructure engineering business for a matrimonial dispute
- In home care franchise service business for restructuring
- Fuel station and gas distribution business for mediation

## SELECTED TRANSACTION EXPERIENCE

Engagements, providing lead advisory services and due diligence, have included the following transactions:

- Engineering business, trade sale
- Advertising business, trade sale advice
- Business services company, acquisition strategy and trade sale advice
- Industrial business, trade sale to ASX listed company
- Tyre distribution business, acquisition due diligence
- Bedding manufacturer, acquisition due diligence
- Restaurant, trade sale advice
- Drilling business, trade sale to UK listed company
- Car dealership, trade sale advice
- Car rental business, business development services
- International drinks manufacturer, advising on acquisition
- Contract cleaning business, acquisition advisory

## PUBLICATIONS AND PRESENTATIONS

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|---|-----------|
| • Quantifying damages in disputes, CPA                    | Oct 2020  |
| • Why valuation experts disagree; CAANZ                   | June 2019 |
| • Why valuation experts disagree; CPA                     | Oct 2018  |
| • Valuing a legal practice; Legal Wise                    | Mar 2018  |
| • Accounting Shenanigans; QLD Law Society Symposium       | Mar 2017  |
| • Valuations in disputes and transactions                 | July 2015 |
| • BVI Cybercrime conference                               | Feb 2015  |
| • The squeeze out and valuing minority interests          | Dec 2014  |
| • Forensic Accounting 101                                 | Oct 2014  |
| • What is your business worth?                            | Mar 2013  |
| • Creating value through acquisition                      | Apr 2013  |
| • Extracting value from your business                     | Jun 2013  |
| • How to make the best use of experts                     | Mar 2013  |
| • Accounting ethics for lawyers (WA Law Society)          | Mar 2013  |
| • Accounting 101 for lawyers                              | Jan 2013  |
| • Business valuations for lawyers                         | Nov 2011  |
| • Tips & tales from the acquisition battlefield           | Aug 2011  |
| • Getting a family business ready for sale (WA Tax Inst.) | July 2011 |

## QUALIFICATIONS & EDUCATION

- Chartered Accountants Business Valuation Committee member
- Chartered Accountants Business Valuations Chair Queensland

- New York Stern University Advanced Valuations with Professor Damodaran, High Honors
- Chartered Accountant Forensic Accounting Specialist
- Chartered Accountant Business Valuation Specialist
- Association of International Certified Public Accountants Accreditation in Business Valuations
- Macquarie University Forensic Accounting Specialisation program
- Kaplan Business Valuation Specialisation program
- American Institute of CPA's Advanced Business Valuation Examination Review Course
- Chartered Accountant and Certificate of Public Practice
- Fellow, Institute of Chartered Accountants, ICAEW
- Certified Fraud Examiner, Association of Certified Fraud Examiners
- Graduate Diploma in Applied Finance, Corporate Finance
- Graduate of the Australian Institute of Company Directors
- Practitioners Certificate in Mediation, Australian Institute of Arbitrators & Mediators
- Certificate III in Investigative Services
- Masters Degree in Hospitality Management, Birmingham University
- BSc Business Economics degree, Liverpool University

#### PREVIOUS ROLES

- Forensic Accounting and Corporate Finance partner BDO Australia
- National Head of Forensic Accounting BDO Australia
- Forensic Accounting and Corporate Finance Associate Principal Crowe Horwath Australia
- Senior Manager Deloitte

#### SELECTED OTHER ACCOUNTING EXPERIENCE

- Sonatrach, working on the audits of the group, which included the operating entities. Sonatrach is the largest Algerian and African company and the 11th largest oil consortium in the world, with revenues of USD\$60 billion.
- Cable & Wireless West Indies. Detailed internal control and process review, identifying risk and control gaps and making recommendations, in line with SOX legislation.
- The Wrens Hotel Group. Assisting in the audit of a group of privately held European hotels.
- British Virgin Islands Government. Preparing the government financial statements for audit and dealing with accounting issues.
- BVI Social Security Board. Audit of the financial statements and advising on treatment of investments.
- National Parks Trust. Control procedures and recommendation for revenue collection. Preparation of management accounts to assist in the handing over of land from the Rockefeller Trust.
- Oxford University, biotech spinouts. Preparing monthly management accounts and advising on strategy.
- Golf course, hotel and leisure facility. Preparing management accounts and advising on controls.
- Accounting advice to start-ups, including recruitment consultant, hotel and IT consultant.