

This is The Endgame, Israel's tech M&A podcast.

I'm Sophia Tupolev, in the studio with Zeevi Michel.

Today we're joined by Attorney Sim Koevary, a partner at Meitar, a top-tier law firm in Israel

Sim spends his time structuring technology companies and architecting deals

for Israeli tech startups, their investors, and of course, their acquirers.

He works with companies from inception to sale,

representing clients like - your favorite EV company -

Sim was also neither able to confirm nor deny whether Snoop Dogg is one of his clients - fun fact.

Established in 1962 or 1992, we're not sure,

Meitar sees the largest percentage of M&A and investment deal flow in the country.

First of all, hello and great to be back here. This is our second episode.

We've gotten lots of great feedback from you all.

We're always trying to improve - and do things better.

In my opinion, lawyers have a super central role in the whole M&A process.

On the technical side, but also their importance in getting the deal done.

Ok? Deal makers versus deal breakers.

We also see this in funding rounds, but for sure in M&A processes with their increased complexity.

So one of the main reasons that our first guest is a commercial lawyer

is the fact that there is no deal that's going to happen without the involvement of an attorney.

I'd be glad if -- and this is the main takeaway, as our podcast is for founders --

And most of all, we want to give you insights and usable tools.

So that you can better plan for your own endgame, from day one.

We will be happy to get your tips on what founders should be doing from day one,

And even more importantly, in the M&A process itself, for example how to best utilize your legal team.

And how to best use all the tools you have available--

From your broad experience, as an attorney, exposed to much of the deals in the market.

My first question to you is, what are the unwritten rules for founders working with their legal team on their M&A.

The most critical element is the relationship between the founder and the attorney.

In Israel, unlike in the US or EU, the attorney is not just a transactional service provider, per se.

And if they are, you may have an issue.

I never want to be in a situation where the client isn't sure if they should call me.

They shouldn't be thinking, "If I call him he'll start billing me."

That's why the relationship is extremely critical. That's one.

Two, the best lawyers are the ones who will always be your first call. Before your parents, wife, whatever.

And why, because at the end of the day, founders selling their company, most of them are doing it for the first time.

Look, lawyers just have the benefit of having seen these situations up close, many times before.

So we know how to calibrate the founder's direction in advance, what to do, what to avoid.

And many times when the founder says ok, I'll get them involved but later....most of the time that's a mistake.

That's why - first, a good relationship, not just in the transactional sense, is so very important-

and an extremely high level of trust - at the end of the day, when I look at my clients I am not just providing a service

I have to be their partner. For the good times, and also for bad. I need to be there for both successes and failures.

But it's a partnership. That's how I see it. And in the end, it leads to much better results.

Rather than a situation where you're transactional. That's suboptimal in my opinion.

Amazing. you know, the analogy that came to mind when I heard you speaking of the partner, is, of course, The Godfather

There's Don Corleone, and then there's his Consigliere, so in a way would you say you are the Consigliere of the entrepreneurs?

And you even recommend that you be that from the start, not necessarily only in the M&A process.

Unequivocally, yes.

Transactions you do for companies that you've been with from the start, are the best and most efficient ones.

At the end of the day, you know every corner of the company, and they come to you with questions and not vice versa.

That is one of my favorite recipes for success. Of course, many times, we come straight into the transaction, for many reasons.

But in my opinion, the best deals are when you've been with a founder since they started with a couple of friends.

And then get to the point years down the line where they're being acquired and that's the peak.

Amazing.

Are you - friends - with any of your clients?

I am probably very good friends with most of my clients. There are friends who are clients and clients who become friends.

But of course. These are people I spend time with, we ski together, hike up mountains, we eat, we drink.

This makes the work much more enjoyable, when it's more personal.

Who pays? You or the client?

Truthfully, it really varies. You get both ways. It's nice. These relationships make me love what I do.

Great. Tell me - I will say that when I advise entrepreneurs in M&A I have an internal gut feeling, when I see who the buyer is

And when I hear the offers, I get this gut feeling - if the deal is going to work out, or not.

It's a lot of parameters. The seriousness of the buyer, the nature of the offer, the nature of the initial communication.

Since you have more experience than me and you have supervised lots and lots and lots and lots of deals

Do you also have that gut feeling when a founder comes and says, listen, Sim, I was contacted by Corporate X

And they are interested in talking to us about M&A, do you also have this internal engine that says whether it will happen or not?

Do you actually have a way to alert the entrepreneur from the start, Don't waste your time, it just won't happen

So we have the "privilege" that when the transaction in most cases comes to us, it's already baked.

M&A deals - when most of the paperwork is signed, LOI, MOU, NBO etc., the deals happen. But a large number of deals, no.

I had a deal a few months ago that blew up, a company that had received a very generous offer. I thought it was generous,

the CEO thought it was generous, the other two founders thought - nope. The bankers also thought it was generous.

At the end of the day, we live in a world of multipliers, you don't take a company and attribute an unreasonable multiplier to it.

And the other founders wouldn't back down- they wanted 2x. I said i was against it, the CEO was against it

the bankers were against it too, and in the end, the acquirer was opposed too, so... the deal went fakakta.

To summarize, and to return to the last question, as long as you understand the field you're playing on,

what the deal is and isn't, what the multiples are, that apply to you, and as long as you are within that space, you're ok.

The minute that the founder comes to you and says, "I will never ever give them a non-compete."

or, "Hard no to holdback," or "No to this, no to that," people who develop ideologies... those things are gonna kill deals.

Interesting. Very. So first, you're talking about a point we discussed last time, which is basically the size of the envelope.

This is one of the key parameters in the M&A process, I think last time we mentioned, that entrepreneurs should

as soon as possible, really try to understand, what it is the size of their playing field in their M&A process.

On the buy-side, I would always receive some kind of instructions from the CFO, saying "this is more or less the size of the envelope."

10 million, 20 million, 30 million, 40, 100, doesn't matter, and I had to operate within this range.

But as the target company, I was always trying to figure out what the size of the playing field was.

And then of course my job is to maximize that, and on the other hand, like you said -- not to break the boundaries.

Because otherwise the deal would have fallen through, because corporate development would need to go back to the CFO.

I was always telling founders I advised, "Do not send corp dev back to the CFO!" You do that, they might re-evaluate

the entire transaction. And not whether it's going to be done at 100 or 105.

So I agree with you on defining those boundaries, and you also mentioned a couple more technical things.

Holdback, escrow, etc. These things end up negligible if the prevailing ideology blocks the deal.

Well, what are the biggest mistakes founders make that end up screwing up the deal?

I think that -- I'll continue in Hebrew, with your permission?

Of course.

I think that the biggest problem is that people do not understand where the boundaries are

For example, they decide that the word "dealbreaker" is something you can just throw around.

You can only say the word "dealbreaker" once.

The minute you've said it once, that's it. You're done.

It's like dropping a nuclear bomb—you only get one shot, right?

Correct. And even so, it's better not to get to that. Unless you really really have to.

Let me stop you for a second. What are dealbreakers that are legit in your opinion?

To me, dealbreakers are something that come down to the entrepreneur's attitude. If you have a person

that is an entrepreneur by nature and it's either their first or second company, or they've done this before,

and now the buyer says, listen, for the next four years, you're going to work for me, and you'll have to do this and that.

And most of your money will come at the end -- that's a back-loaded deal, that's very complicated in my view.

But in the end, you're buying an entrepreneur because they're an entrepreneur.

Taking an entrepreneur, buying them, then putting them in a golden cage when they're a wild bird— really problematic.

And that's why I think that is one of the few things I'd truly fight for...

We have endless conversations, especially with lawyers, about risks and exposures, and a lot of things that are just noise.

The amount of conversations and time wasted in M&A deals over whether it's "with knowledge" or "without knowledge,"

or, "with material" or "without material," "best efforts" or "reasonable efforts," usually serves the billing, not the client.

At the end of the day, what's most important is: the entrepreneur needs to understand their interests and what they're fighting for.

By the way, sometimes they're told what their best interests are, but it's not actually what's best for them.

There are often conflicts. A banker, for example, who's brokering a deal, has one interest: for the deal to go through.

It's all the same to them whether the founder stays for four years, or holds back for two, or one—it doesn't matter.

They just want a deal; it's a 0 or 1.

Lawyers want the deal to happen too. If it doesn't, they'll still make money, just less of it. The accountant, same thing.

In the end, you need to understand who your allies are in this process and who will really tell you

what's important to you - interests aside. That's my opinion.

I think, in the end, a lot of people surround themselves with familiar faces, and that's not always the best strategy.

Yes men. You bring up another really interesting point: how to focus on the core issues of the deal and not everything around it.

Another major mistake, like you said, is not surrounding yourself with the right people

or, not assembling a team of experts who will be with you and help you. This is where VCs

come in.

I want to take a moment because you represent a lot of acquirers and targets and under them, there are shareholders,

especially in the target companies, especially in our world, where VCs are central to helping companies grow.

How many times have you seen a conflict of interest arise between the founders and the shareholders,

especially the institutional ones, and how can you, as a lawyer, help the founder bridge those gaps?

Like you said, the banker wants a 0 or 1—he wants the deal to happen. The lawyer is there to guide.

The VC has their own interests - sometimes. Sometimes they want the deal to happen, and they don't care

if the founder has to work for four years after that or not, because they just want their multiple.

So, how do venture capital firms fit into this picture?

Conflicts of interest usually arise in bad deals. When everyone's happy, everyone's happy.

You've got the gravy, the party balloons come out, to buy swag, whatever.

When the deal isn't what everyone wanted. That's 90% of deals, by the way.

Unfortunately, that's especially true since 2022, it's become even more noticeable when there's really a conflict of interest.

In deals where VCs get all the money and the founders walk away with nothing, the founder might say,

In this situation, I have no reason to sell the company.

So, how do you bridge the gap and keep everyone on the same side? One team.

That's what we were talking about—the VC is supposed to be the founder's partner too. But again, there's often a conflict of interest.

How do these things play into the decision-making process?

The truth is, it's a fascinating question.

In the end, I think making a deal where one side is happy and the other is miserable is a recipe for failure.

Everyone should be equally unhappy.

When the deal isn't great, that's when you know you did your job well.

Here's the tagline for this podcast: "Everyone should be equally unhappy."

Exactly.

And that's something we've talked about a lot, Zeevi—whether it's really possible to do an M&A deal that's truly a win-win-win?

Right. I want to ask Simcha what he thinks about that.

When there's a lot of money on the table, the answer is yes.

When there's not a lot of money, then you make lemonade. How:

For example, take the founder who built a great company, but sold it for less than they wanted.

But that founder, in the end, is the base for the next VC.

There's nothing better for a VC than a founder who succeeds once, and then again, and again.

And they're the goose that lays the golden eggs. First of all, because they know how to make the golden eggs.

Perhaps it's not gold this time, maybe it's silver or copper, but at the Olympics, it doesn't matter once you're on the podium.

And don't forget, founders have friends.

I'll jump back to the subject because we talked about this last time

The opening was always, "Great Day for Company X, acquired by Corp Y for \$500 million - happy-happy-joy-joy."

Then, the same company could be sold for \$300 million but be "a disappointment for investors, as it had raised \$150 M"

I know firsthand that the amounts reported are often not the real figures.

The numbers aren't what they really are, so as someone who truly knows the figures ,

I'm curious about your take on the discrepancy between what's reported and what actually happens.

Of course, we're not talking about any specific deal, but in percentages,

If someone says a company was acquired for \$100 M.

From your experience, what have you seen? What's the real number?

I'll split this into two.

If the deal is good, the correlation is very high.

If the deal is not, the correlation is very poor.

In transactions involving a lot of money,

the numbers are usually accurate.

Sometimes when someone leaks to the press,

The reporter might "not have heard exactly"...

whether it was \$450 million, \$470 million, or \$1.1 vs. 1.2 billion

but in bad transactions, I think there's...

The event becomes a problem for both parties.

Let's say a company acquires another for peanuts.

Why would you want to tell anyone that?

You wouldn't tell anyone. But you can tell a story.

So, let's take the deal price and

maybe add the earnout that might come along

and you'll get a bonus if you stay and so on.

Use an exchange rate of 5.5, and you get a decent number

No harm no foul, what do you care?

Tell a story, everyone's happy.

I hear you. So, our first tip is don't believe all the numbers you hear.

Over the last ten years, in my opinion, most deals in the country fall into this bucket.

When you look at the statistics, most companies

won't make it to the end.

Let's put it this way, you're probably right that in really good deals,

really high-quality deals, when there are many interested buyers,

then the story looks quite different altogether.

Yeah...but as a communications person,

I think about the headline.

And I think about what we're able to put in the press release

And I -- obviously I want to write \$100 M, not 98.5.

Right there's a big difference in your story.

And I also think that,

You have to accurately report

what's happening in that transaction.

ZEEVI:

Says who?

SOPHIE:

Well, as a communications person,

I would not actively lie about something I knew to be false.

So...

ZEEVI:

Let the attorneys give us their legal opinion, Sophie. [Laughter]

We just talked about this yesterday.

If the target and the acquirer are not public,

There's no obligation to report anything; it's not mandatory.

No numbers, nothing.

if the acquiring company is a public company, indeed there is

what's called substantial, to my understanding in the United States

it's 2% of the value of the acquiring company

So if the acquirer is public it is indeed required to report some amount,

If that amount is over 2% of the value of the acquirer.

Let's put this in perspective, if Microsoft buys a company

and Microsoft is worth a trillion dollars today,

2% is 20 billion dollars [not \$2B as misstated verbally].

So \$20 B dollars. Under that, there is no obligation to report a number

Most deals are like that.

So legally, they're not required to report

a number, nor that the transaction occurred.

So, there's what we would have liked in terms of communication

and there is a narrative we want to tell.

very often as I help entrepreneurs, I say let's not forget we also need to control the narrative,

if not for this deal but for the next companies we start because

we will establish more companies and we want a situation where everyone

either remembers or finds out that we got our company acquired.

The details don't really matter, whether it was 50 million, 55, 22, or 30, it

It is no less important, if not even more so, because the players are serial players.

An entrepreneur who sells a company at age 30 or 40,

the chances that they won't move on to the next thing

is very, very small because these are people

who are entrepreneurs in their nature,

and therefore narratives are very, very important

many times the actual amount doesn't really matter.

If an entrepreneur went home with 30 million vs. 31 million, who cares?

The market is small, so we always know what's happening,
if there is a good deal, everyone knows it's good,
if there's a deal that is bad, everyone knows

and it doesn't matter what's printed about it.

whatever comes out, comes out. Everyone knows,

and in the end, we're playing on a very small field,

we are always very good friends of the accountant, and providers

So most of the time, we know the score.

But truthfully, I completely agree with you that the smaller deals
are usually much more lucrative, especially for founders

Many founders succeed bootstrapping, get a company going,
and sell it for merely fifty million, but as you say,

if someone invests two million dollars and the entrepreneur is 40% of the cap table,

that's a big success, and they've done their part for the children
and sometimes even for the grandchildren.

Yeah, but that's not what gets reported in the story.

Right, because that's not sexy. Selling a company for a billion dollars
or for two billion, very sexy.

the articles come out, yes, it's very nice, the headline.

but the truth is, after all the chips fall

and the headlines pass, it becomes less exciting.

I wanna ask you.

What's the definition of success for YOU? In your role in a deal.

Excellent question.

I love to be in a place where I know I can make an impact,
or I know how to do something others don't. That's my nature.

There are people who are happy being a cog in a machine
doing their 9 to 5, 9 to 6, 9 to 8, whatever.

of course, weekends they're not available --

Lawyers outside of Israel, they've got two phones,
a personal and a business number--

we know the drill, but it doesn't really work here, but...

but in the end, success is if I managed to take
a process I thought was going okay and improve it
so that my stakeholders - the board, the founders,
so that their position improves.

If I haven't done that, I call it a failure.

So, you're actually talking about how you can impact shareholder value.

Absolutely.

We will get into this later, but there is a difference between
the legal aspects of the deal,
which causes some confusion in my opinion.

People think that lawyers only handle the legal aspects of M&A

But then there are the commercial aspects.

While it's true that it's not the lawyer's prerogative

to handle the commercial aspects of the transaction,

but - a good lawyer can dramatically improve the commercial terms of the deal,

while not under their responsibility, but because of their ability to get it done.

That's where shareholder value can increase dramatically

I actually want a concrete example.

Do you have a story about that, when you or someone on your team -

SIM:

I have a great story.

ZEEVI:

We love those stories. No names though.

SOPHIE:

No names.

SIM:

No names, fake numbers...

One of the companies we took care of from its inception

- truly an amazing company. They got an offer.

From a huge player. The amount, not too shabby at all.

and the board convened and said, "Okay, let's bring in the bankers."

We'll pay them their fees, we know what this should cost.

And we said okay, if this is the offer, the bankers will be able to get us 15-20% more.

We all know - we all know this game.

The acquirer, you bring in the banker, no problem,

I'll check with my client, blah, blah.

My partner, in my opinion one of the best lawyers in the country,

says to the founder - listen, let me manage this thing.

The founder agrees and they get on a plane.

They sat in a luxury hotel for two days,

At the "Five Seasons."

Yes, the "Five Seasons."

And - they sat there and he wrote the whole argument for

- and convinced the founder, of what he thought the company was worth.

They practiced, and then the founder went to meet the buyer,

In the end, after a very lengthy and heartfelt presentation

The founder goes, "Therefore, the company is worth exactly double the offer."

To make a long story short, the deal eventually closed,

and that lawyer brought in an additional \$200 million for the shareholders.

Two-hundred million dollars. Single-handedly.

That's insane. How much more did the founder take home, or, the founders?

According to outside sources...an additional \$30 million.

And what were the attorneys' fees on this transaction?

Yeah, uh, can I ask you, how much did you bill?

ZEEVI:

Exactly. Not enough - that was the answer I imagined

SOPHIE: Did you get a bonus? Haha, do lawyers get bonuses? How does it work?

Lawyers do get bonuses... the issue is

It's just like...one of my partners

his father, his late father, was one of the best neurosurgeons in Israel.

And he said that whenever one of his patients used to ask him,

How much do I owe you? He used to have the same response.

He'd say, pay me 10% of what you were going to pay me 1 second before the operation.

So-- when you have something in hand, it's always different. We all know that.

There's a firm in the US called Wachtell,

Considered super tier 1,

And they've moved over to a model called value based billing in some of these deals.

They say, this is the deal, we're not billing by the hour.

Rather, here is the value I think I brought to the deal.

You want to pay, great, you don't, we won't work with you again

Interesting.

Very. And especially when the relationship is like --

ZEEVI:

It probably wouldn't work in Israel, though.

SOPHIE: Amazing, um, but how often does that happen?

I mean, are you actively seeking out opportunities to create shareholder value?

Because we [attorneys] have this vantage point, from a critical juncture,

The ability we have to connect people is significant.

And I find myself doing this quite a lot.

I do it because I believe that it's necessary.

Otherwise what I'm doing there isn't interesting.

But the ability to connect between groups

between people and companies and investors

That's a relative advantage. It's definitely not the job description.

By the way, some firms say yeah, we'll connect you,

But I get suspicious when I hear that.

So the next tip is - to be very concrete

one major suggestion is that,

entrepreneurs, at the outset, need to find their allies.

Particularly, the legal partner that suits them best

Since it's not just about establishing the company--

nor technical, trivial things -

but you've got to build up those relationships. That's what you're telling us.

SIM:

Absolutely.

ZEEVI:

OK so, the number one tip for founders --

When you're setting out on that journey,

Regardless of the path you are taking - VC-backed, more standard, vs.

bootstrapped - in both cases, the legal partner

that is right for you, regardless of the law firm,

it's much more on the personal level, is super critical.

It's so important - it's dramatic.

It's so important. You know how life goes.

what happens with ups and downs and disappointments

and everything, and if you don't have the right person,

the one who will always have your back, no matter what.

If you don't have the person who you can trust to always tell you like it is,

to always tell you the truth -

and give you the right advice for YOU-

if you don't have that it's a waste of time.

Let's talk a bit about skeletons in the closet. Legal ones.

Unfortunately, in recent years while helping companies

try to get acquired,

I've been in situations where I'd suddenly discover

that there are tons of skeletons in those closets,

All sorts of companies that they'd established

Entities, lawsuits by employees,

issues with suppliers, all these things go into

excuse my French, a giant pile of sh*t,

as long as nothing is happening, you can manage it--

But then comes the long-awaited moment when

we are indeed approaching some kind of transaction

or M&A one way or another

and then suddenly all these things pop up.

Some of them are what's called somehow manageable.

in disclosures, for example, and some are a bit more problematic.

I'd be happy to hear what the best way is to deal with these things

sometimes there's no choice that's the price of doing business,

like an employee who you didn't get along with, suppliers.

And would love to hear any examples of deals that blew up

because of something legal, that was tough to get out of.

Let's exclude anything criminal.

I think the first question in cases of skeletons in the closet,

is if this is something core, or if it's just about money.

if it's just money, my advice is, always do a disclosure, even if the acquirers won't like what they hear.

There are cases of "just money."

There are also cases of, you say listen,

I have a problematic employee or I have a sales person

that wanted one thing or another, look--

honesty is the best policy at this point.

If there is something that goes beyond that, if you took--

We've even encountered that -

Or if you set up your company on the aftermath

of your previous company with the old code,

and you suddenly get a letter that says, Hi Partner, 30% is mine,

That's something else.

So - one, I think as long as it's just about money

I would do a disclosure in advance - by the way,

this is very, very, very unpleasant to have to do.

ZEEVI:

It's quite scary too. As an entrepreneur.

You say, I'm exposing things that can blow up the deal.

At least in the perception, you are very concerned.

That's why you have that balance, I agree

that honesty is super critical in M&A...

because, the buyer is your future business partner.

In the future you'll be partners or work together-

But this is super stressful.

It's terribly frightening. You say, God knows

what will happen when they discover, or what they'll think,

but the opposite... is a whole lot worse.

If you accidentally don't mention something,

you're in the universe of...fraud, in the worst case,

lack of credibility in the best case,

And in the end, the investor or buyer is constantly evaluating you.

This is an ongoing job interview.

They see how you behave in different situations and can say,

No, no, we don't want something like this.

SOPHIE:

It's interesting because we were talking about

what are those dealbreakers for the founder,

that's selling the company.

I guess the acquirer has their own dealbreakers and [as the founder] you don't know what they are.

But my question is, Sim, do YOU know what those dealbreakers are, typically

And can you help someone navigate a situation like that

Either "They're going to say this is a nuisance,"

"Don't worry about it," versus, "You're f*cked."

At the end of the day, Americans want to see you follow the protocol

and that you're not some kind of wild animal.

The wild animal is the scariest for them.

No matter what it is, as long as you're contained

and you follow the rules, everyone is happy.

Yeah but these Israeli founders, no offense,

they don't always know what those rules of the game are

because they're different out there

than they are here, in our zoo.

That's correct, and many times it's also perceived as something charming.

So, I think your question about what a deal breaker is?

As long as the Americans understand that you, after all,

in all these companies, the entrepreneurs become Senior Vice Presidents or VPs, depending on the size of the company.

If he sees someone who says, ok they can be in my company and not embarrass me terribly, or do something absolutely crazy, that would make sense.

And if they don't do that, then we are in a different situation.

We've had cases where I got reprimanded by the lawyer on the other side, because my client, went against the NDA, and issued a press release.

So he read it in the newspapers first.

I told him, listen, I'm so sorry, I had no idea, he didn't know,

He didn't read.

But the second time? What are you going to say?

What can you say? That my client is a dumbass?

He pisses rainbows on everyone?

This happens.

And there's no doubt that Israeli audacity

has taken us places while preventing us from reaching others.

But many Israelis fail to grasp the no-no's for Americans,

How many times, before a meeting, are you coaching the founder on these things, the nuances?

SIM:

They don't give a sh*t.

Founders don't - they'll just say whatever they want.

Whatever they want.

In the best case it's perceived as charming.

But to your question, founders will say what they want .

There is no doubt that there are many cases where

you're shifting uncomfortably in your chair hoping for the ground to swallow you up.

So we're actually going to cut to a commercial break,

and now a message from our sponsors, you guys can relax for a second!

ZEEVI:

Didn't know we already had sponsors!

No, Zeevi, you're the sponsor.

I'm a minor shareholder in this venture.

ZEEVI:

Listen, companies that sell water, man. Genius.

Anyone selling water in a can.

You know there's a company in the US, it's like, amazing,

it's called Liquid Death, you heard about them

Yeah, yeah.

You know how they started?

They're not our sponsor.

The story is this rocker guy,

and he discovered that, performers,

they're working their audience,

they take a beer can and put water in it,

they don't want to look lame,

so they put the water inside the beer can and it looks cool.

So he goes let's do a brand called Death Water [Liquid Death]

Throw it in a can, looks like a drink, but it's totally water.

The company is worth several billion dollars. Genius.

I want to go back to that point, about legal skeletons.

That can wreck deals. You mentioned things that are about money,

and then really, that's solve-able.

but there's also an example with IP.

Like claims on the IP from certain employees,

from past partners, and other examples.

Here, I'd like us to hear your Do's and Don'ts, for founders.

really throughout the process the company exists,
not just related to M&A

that is, if you start to encounter issues,
how can you solve them when they are small

when there isn't even anything to dispute or fight about yet,

I always say people fight when there is something to fight over,

And it happens, a founder leaves,

suddenly one of the advisors will come and have a claim on the IP, even though they're an
advisor,

even though the agreement says one thing,

There is a lot of nuance here.

I would love to hear your tips, how founders can handle

these issues, not when we are already in the M&A process, but much, much earlier.

In my opinion, because of our culture...we say we'll handle problems when they arise.

And we ignore -- I'll go back to the example of a company that I helped

Really, the amount of things that popped up,

Like entities in the world, debts they have, grants.

And all sorts of crap. And again, the founder did everything

that I would have done in his position

he wanted the company to survive so he went and did whatever he could.

but then when the moment of his endgame arrived,

Oh sh*t, now we have a massive issue to solve.

And this was not something you could have solved with some cash.

You said it. This is the key.

In the end as lawyers, we try to protect
the most significant interests of a company.

The companies we take care of are usually software

and some hardware, a bit of other business types.

Let's talk about the software companies

the most significant thing is the IP

Where do you see this rear its ugly head?

A number of places. One -

current employees have formats that work well for them.

Many founders say, I've seen one, I've seen them all.

How many founders have told me, I had a great format in my previous company,

And how many times do you go and say,

This guy is my bro from the army,

I don't need to sign an employment agreement with him.

Who cares, it's my friend, he's going to give us a few lines of code.

Or gives us the code written on his own computer at home,

and...oops! Chaos ensues.

In the end, the biggest problems

Putting aside anything criminal, et cetera,

the biggest problems are going to be around the IP.

This is where you should not be looking to save time / money.

This includes, people who work with you from service providers to

consultants, employees. Everything's got to be by the book.

and properly documented.

People who leave the company, and might have some issues,

it would best to sign separation agreements with them.

At the end of the day, who's your worst enemy in an M&A transaction?

You're your own worst enemy.

No, not the tax authorities,

The intern on the other side, doing due diligence on you.

He or she is the best intern ever.

And what is their job?

To find the skeletons.

To find something.

The intern that goes and does due diligence and has read 700 documents

And you say, so what did you dig out?

And they say, everything is fine actually,

It's a f*cking disaster.

So people are digging to find something .

Seek, and you shall find.

So then you discovered...

Suddenly, you see something like,

the genius founder has said, ok, I have an American parent company,

and an Israeli subsidiary. So I'm issuing the options from the subsidiary.

Why... because it seems like it makes sense.

And we wanted to save a bit of money on expert advice.

Based on a true story.

So this happens very frequently.

And there is no end to situations where

you've left unfinished business and said it will be okay...

Like the Ukrainian developer you hired to write your code

and had him sign an Israeli document,

It doesn't work.

When you bring on a developer in Ukraine, Poland,

If you don't have the right paperwork it can be catastrophic.

The amount of American developers that I had to find,

and get signatures from the day we were signing,

Now imagine trying to explain to some intern

why I need them to sign something from a 3 month job they had 3 years ago

They go, wait a second, why do I need to sign this?

Maybe I should be getting something.

It's difficult. And trying to find everyone.

The most important point to remember is

they don't even need to file a lawsuit.

A letter is enough.

You write a letter. With literally any random lawyer.

They're done. We see this a lot when you have a deal that

you see this a lot between signing and closing.

That's when the creatures who come out at night

have their feeding frenzy. The problem children.

Sim, I want to ask you about - we were just talking about skeletons in the closet.

and some of the terrible things that come out.

and all the people that are interested in those things coming out,

Could you give us 5 things that the founder can control

that they can avoid those problems down the line

if they think about it a little bit before?

Obviously don't break the law. Don't steal. Blah blah blah.

When you're setting up, where are those places that
you see people cutting corners and then they get f*cked after.

Always in equity.

Always in equity.

At the end of the day, the most significant part of the company is the equity.

And way too often, the founder puts the person at the bottom of the food chain in charge of this.

Now you have all these tech solutions, this helps.

But you get these situations where the admin are managing the lists.

Excels. Exactly.

Reporting, not reporting, on time, not on time.

Grants not happening on time,

By the way, another thing happening a lot is

We all know the worlds of our developer colleagues

Developers will put whatever they want on their computers.

Then you get into the questions around open source.

This happens all the time. Comes up in due diligence.

Permissive. Not permissive. What library.

In their previous company it was okay...

and we see that all the time.

We see people working on all sorts of initiatives in their free time

Happens all the time.

There are founders that claim their employees are open source whatever,
contributing on weekends, to the community,

But very often, it's not that. And it ends badly.

The subject of IP. We talked about equity but
every founder needs to make this a priority.

The IP is your company's main asset.

It might sound trivial, but people on open source,
they work and work, wanting to contribute - we do it as a cultural thing.

We want to let employees contribute to the open source community.

If these things are not done in an organized and regulated manner,

On M&A day, you WILL have problems.

We have to go and explain, why is part of the company's IP sitting in some community.

Or, why is a central part of your company's IP built on some open source library?

Which it is actually not allowed to be used for commercial purposes? Now what?

These things are super, super critical.

So this is another tip, handle your IP properly from day one.

If you launch your project while you're working at another company.

Maybe you're at Google. Amazon. Something else.

Remember that Silicon Valley episode where he just opens
his computer for one hour while he was working at Hooli?

Right!

Or a half hour, or a minute.

That was the start of the whole saga.

So these things are super critical. Really.

You started this company on the ruins of your last company,

Suddenly someone out there has a claim,

The whole topic of IP, really, this is crucial.

We live in this world of software - it's true that we don't really deal with hardware
and we haven't talked about pharma, which is a very organized industry, regulated.

Why is software the Wild West?

As Israelis we are so good at improvising, executing,
sourcing all kinds of solutions to any problem.

Then, we don't think, and we want to run as fast as we can,

I'm not trying to scare anyone here.

But please check that you're on top of your sh*t.

And that you at least know what it is that you are doing.

Of course, everything around the code.

We're not just talking about patents.

There is something I've often heard--

Do patents even mean anything in software?? The answer is likely a no.

There is not enforceability.

So I don't want to damage our fantastic patents practice,

But often people will put a patent on hardware + software.

You might very well be doing this for your investors.

But I was saying, I keep hearing

people say, "No no, we don't have IP."

IP is not just about patents or trademarks.

But in our world, it's any and all proprietary information.

Especially, trade secrets.

Especially, numbers. Customers. Practices.

In the end, you take the very successful companies and

their deep IP is not that interesting.

ZEEVI:

Nobody is splitting the atom.

No. Definitely not. But:

This is core.

Your code is the Holy of Holies.

If you accidentally bring someone on and cheap out on buying them a laptop

so they use their own... this happens all the time.

You get to a transaction, it's all checked and these things come out.

And that's going to be a total sh*tshow.

Now let's go back to equity.

Everything with options, grants, common shares,

Obviously lawyers handle this stuff,

Founders barely have to deal with it,

In most cases because they don't really understand it.

Then it rolls to the CFO, if you have one, great,

But most companies don't have a CFO, maybe some CFO-as-a-service...

And then someone ends up managing it in an Excel.

Of course you have software to simplify it too.

This is probably tip #4,

This whole topic of options, grants,

Don't get into a situation where someone can accuse you of backdating,

because you didn't grant on time,

even if it was just an innocent mistake and not malicious or criminal intent.

But suddenly it screws you over.

Like you said, did they grant, did they not, at what price, was it the right one?

By the way, where does this screw you over the most?

When employees think they have something, but they don't.

That is what screws you over.

For example, an employee that got a grant within 90 days of the transaction,

They can't get 102 benefits. Why? That's how it works.

Or situations where people did not qualify for 102.

But it's written in the contract. 102.

The employee says, but it's in my contract.

In the story I just told, the employee had a contract with a 102 on it.

Maybe you can elaborate on what 102 is.

102 is basically the clause in the tax code which we use

when we deal with employee stock options, as a category.

It does two meaningful things:

By the way, this is one place where the State of Israel actually helped its tech industry.

Yeah, Americans who hear about the fact that

you can't write off the option grants as an expense, they freak out.

They freak out. They just can't wrap their heads around it.

Can you explain why?

Because it's capital gains.

The minute it's capital gains, you can't write it off as an expense.

When Americans grant options, you can expense it. It makes them crazy.

In many cases, where people receive options,

The 102 does two things.

As long as you abide by the rules,

it delays the taxation event, from when you exercise to when you sell,

And it puts you at 25% tax,

Provided that you're not a controlling interest holder,

So, it's amazing. It's amazing.

You can compare it to a startup person in Silicon Valley,

The Valley, France, Germany, Spain.

But does the company have to know to do that for the employees?

SIM:

Of course. And that's the issue.

And you have to adopt a plan and count thirty days and everything,

There is a procedure. And who checks the procedure?

Remember our superstar intern from before?

Sitting with the Excels, saying, okay, did we report to the trustee
within 45 days of the board approval?

No, X. Did you provide the trustee with the grant documents within 90 days?

In my case, long after the deal, with RSUs, there was incorrect reporting
from the American corporation to the trustee here.

Five years later, when I came to exercise the RSUs,

And they were going to withhold 50% tax.

Of course, in the end, it's still Israel and we managed
to find a solution

that friend of yours from the army?

The CEO from the company managing the options.

Ah, she left.

Exactly, but it's really like that.

For example, how many entrepreneurs do you know who started a company and said okay,
let's go, first employees, exercise price of one agora and everyone gets acceleration.

Now what is acceleration exactly?

You say, cool, I'm Robin Hood.

But in the end, God created only 100 percent.

you reach the transaction and if there's acceleration for everyone

it comes out of somewhere, where does it come from?

From your investor's pocket.

And by the time you figure it out,

So, who are the right key executives to give acceleration to, how would you decide that?

In my opinion, anyone who can get you to the deal, deserves it.

There's a concept called a double trigger, I think that's an urban legend, I don't believe in it.

Could you just explain what that means?

Yes, the double trigger, as opposed to a single trigger,

means that two events need to happen for you to get acceleration.

In a double trigger usually, one, is a deal,

and two, they fire you.

Now I'm saying first of all, I've never seen that happen in real life.

Why? For many reasons.

When there's a deal, you put money aside for when you fire people? It just doesn't work.

In my view, key players deserve it.

Now we're talking about liquidity events. M&A, okay. IPO? That's a question mark.

Technically in an IPO, do people deserve to get acceleration?

Many people automatically say yes. I think not.

Right, because an IPO is much more similar to a fundraiser.

An IPO is simply raising capital. From the public.

Exactly, everything continues as normal.

God forbid death or disability so his heirs need to receive.

But in a transaction, who are the real catalysts?

Ok, the CEO. A strong CFO, which is critical in any company. A strong CFO.

For the larger transactions. But let's not forget we are still talking about companies being acquired for \$20, 30.

There's a good chance they won't have a CFO so it's a CFO as a service.

And they are supposed to support them, etc. They are less core.

The CFO is a very strong player,

and the C-Level is very, very significant in making a deal happen, right?

You can't deny it. These are the people, with all due respect to everyone else,

They are the ones who have to score the touchdown.

also, you take a person who is C-Level, who "only" gets 1-2 dollars

it's a life-changing amount.

Well here, Sophie, a case you know personally,

There's the founder, there's the C-level,

The founder is set to make dramatically more money than the C-Levels but

But on the other hand, the day after the transaction, the C-level

is expected to show up and pass the torch in the best way,

It can feel a bit like a conflict of interest because

the founder is basically out to lunch in the Carribean,

The C's got their million or half a million

But there is often that bad feeling.

Yeah, but honestly, I have to come to the defense of the founder in this case

Because you know what, you're a C-level employee, you're a VP,

You didn't start that company, you didn't put your family's savings on the line

you didn't take the risk, you came in and you got a paycheck.

You got a stable lifestyle. The entrepreneur put their whole life on the line.

I always, as much as I make fun of some of these guys sometimes,

and Zeevi, you've heard me say some terrible things,

but listen. There is one guy or one girl who took the risk,

Maybe a couple of them. If you're not them, don't complain.

And say thank you that they took you on that ride.

Honestly, a little gratitude could go a long way in this ecosystem.

But the truth is that in these cases,

with good entrepreneurs, they will always take care of the retention of their people.

And that is actually the easiest thing to do - why?

It doesn't come out of your budget. Exactly, it's not on your dime.

Yeah but some of these guys act like its coming out of their pocket, which is annoying.

But those guys are assholes.

Exactly.

Finally, I got you guys to curse in the last 5 minutes of the podcast.

We do or don't want to curse. Wait, is this a podcast you can swear on?

Yes, it's - hello, there's a parental advisory sticker on the podcast!

Parental advisory, for explicit language!

Someone who saw the podcast pilot said

that Sophie is like Niv Raskin,

And that I'm like Ron Kauffman.

I don't like to curse, you get me?

I told Sim that, [banter] well I can tag him in the post.

He's so radiophonic. And a good guy.

Amazing. So I'm Ron Kauffman,

Amazing, last time you said I was Tal Brody, Hi!

Totally - right?!

No no guys, a couple people listened to the show

and said don't let anyone compare you to Tal Brody...

shut them down immediately if that happens.

Tal Brody is awesome. He's a total legend.

He put us on the map.

Zeevi Michel is the legend.

Do you ever see the name of a lawyer on a deal and you just know it's going to suck?

Wow.

I'm sure there are some that aren't your cup of tea.

What a great question.

My area is a place where people don't fight that much.

But the amount of ego, is absolutely infinite.

Unlike litigators, that are constantly going to war,

And constantly looking for the next win,

We are not living in a world of wins/losses. When you think about it.

You see a litigator coming back to the office happy, or pissed off,

they've won, they've lost - it's very different for us.

I think that I try to maintain a good relationship with as many people as possible.

Of course, some are simply a public menace.

The truth is, those people make all of us look bad.

It can easily become, not just one problematic attorney,

But suddenly, the attorneys are problematic.

I've gotten dragged into this myself.

Recently one of my clients said to me,

yes, but you were no Mother Theresa.

I said, I really tried. But at a certain point....

It's like when kids fight. It doesn't work at a certain point.

At the end, the rapport

between and among the attorneys, has significant impact.

This can actually make or break it. Because -

Clients know what clients know.

And when they don't know something - nature hates a vacuum.

Who gets dragged into the vacuum. Whoever does know.

Suddenly, the client takes a step back, the attorney takes a step forward,

And suddenly, the client is sure this is now the Battle of Masada.

And the attorney starts fighting for it like crazy,

when you take a client who doesn't understand something, and a bad attorney,
that's a catastrophic combination.

Because scaring clients is the easiest thing in the world.

Like a doctor. "Oh, that's something I would be careful with."

So I'm gonna quote you, Sim, from the research we did

You said, the best combination is a client who knows their shit and a lawyer who's a deal maker

And the worst combination is a client who does not know their shit and a lawyer is a deal breaker.

Wow.

Incredible summary.

And it's really, really,

You said it. I just quoted you so thank you.

You're absolutely right, Sophia.

I love to be right on my own show I love it. This is why I do this community service.

ZEEVI:

Great summary for the show.

Wait, can I, I always say, can I get that on a T-shirt? You said I was right.

Who said I was right? Love it.

I always say you're right!

Zeevi, final thoughts, lightning round?

I think for the summary, it's important to remind our listeners that

the point of this podcast is to provide as many tools as possible.

We're bringing you guests from the whole spectrum of the M&A process,

there are the buyers, there are the sellers, there are the... lawyers, the investment bankers,

there are so many, many, many partners
involved in this thing called M&A.

I don't like to define it as good or
bad, terrible, less good;

every deal is a worthy deal with
its challenges, its winners, knowing how

to do a deal that's win-win-win
and it fits every situation, it's not a simple thing,

that's why we started this podcast.

And I'm very happy that Sim came here and contributed his..

.
perspective as someone who truly sees a lot of transactions.

Don't forget, the lawyers are your partners in the process; they're not just paper pushers

certainly not in Israel and definitely when working with other cultures and places,

there's a lot of importance to having the right lawyers,

sometimes even from the commercial terms

that actually generate money for the shareholders

So, I'm very glad that Sim joined us, our first guest

and in the upcoming episodes

we will bring on more aspects of the deal, whether it's VCs, investment bankers, etc.

Absolutely.

Excellent summary

Thank you so much.

No, thank YOU.

Sophie, you're right.

Sorry what was that?

You. Are. Right.

Thank. You.

Shana Tova.