

# **Business Students and Faculty on the Same Side of the Desk: Engaged Students and Collaborative Faculty Present Three New International Business Ethics Case Studies**

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**Abstract.** We describe the project narrative and resulting case studies as an example of a successful engagement in business ethics education for two reasons: 1) to present an example of a pedagogical approach that engages business students in thoughtful research and consideration of complex ethical issues through a case writing exercise in collaboration with faculty, and 2) to provide three new cases and teaching notes suitable for use in multidisciplinary courses. We present a description of our experience along with the fruits of our project—three new case studies accompanied by analyses and teaching notes—with the hope that other faculty will find the pedagogical approach inspiring and the cases stimulating and teachable. A group of undergraduate business students working with faculty members and practitioners helped research and write case studies on topics of the students' choosing. The resulting case studies and teaching notes can be shared with faculty from diverse business disciplines who can readily incorporate them into their curricula. The pedagogical approach of collaborative research and writing offers an example of engaged student learning and hands-on teaching for other scholars and instructors.

**Keywords:** business ethics pedagogy, student-faculty collaboration, international case studies.

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## 1. Introduction

It is a central goal of business education to engage students in thoughtful consideration of complex business issues. If we can generate enthusiasm, nurture interest, and guide careful deliberation, we succeed.

We offer this teaching case project as an example of one fruitful engagement in the field of business ethics. We offer a narrative of the project and the resulting case studies for two reasons: 1) to provide an example of a pedagogical approach that engages business students in thoughtful research and consideration of complex ethical issues through a case writing exercise in collaboration with faculty, and 2) to provide three new cases and teaching notes suitable for use in multidisciplinary courses. We present a description of our experience with this teaching case project along with the fruits of our project—three new case studies accompanied by analyses and teaching notes—with the hope that other faculty will find the pedagogical approach inspiring and the cases stimulating and teachable.

Helping business “come alive” for students in a meaningful way is a constant challenge. In the case of business ethics teaching and learning, research indicates that students often succeed in articulating theory, defining terms, and identifying concepts, but there is much room for growth when it comes to application and analysis.<sup>1</sup> Students may be able to “solve” a specific fact pattern and demonstrate that they have mastered the basic theories surrounding ethical analysis. We find that students are less able to generalize from the specifics of one classroom case to the more demanding and ambiguous problems that they will encounter in the everyday practice of business. Research suggests innovative pedagogy and meaningful student-faculty engagement can go far in bridging these gaps.<sup>2</sup>

We are hopeful our approach offers a unique contribution. We placed students and faculty “on the same side of the desk”, by working together to explore international business ethics dilemmas. The case study writers are

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1. Gentile, M. C. (2010), *Giving Voice to Values: How to Speak Your Mind When You Know What's Right*. New Haven, CT: Yale University Press.
  - McManus Warnell, J. (2010), “An Undergraduate Business Ethics Curriculum: Learning and Development Outcomes”, *Journal of Business Ethics Education*, 7: pp. 63-84.
  - Christensen, D., Barnes, J. N., & Rees, D. A. (2007), “Developing Resolve to Have Moral Courage: A Field Comparison of Teaching Methods”, *Journal of Business Ethics Education*, 4: pp. 79-96.
  - Caldwell, C. (2010), “A Ten-Step Model for Academic Integrity: A Positive Approach for Business Schools”, *Journal of Business Ethics*, 92: pp. 1-13.
  2. Umbach, P. D. & Wawrzynski, M. R. (2005), “Faculty Do Matter: The Role of College Faculty in Student Learning and Engagement”, *Research in Higher Education*. March, 46(2): pp. 153-184.
  - Dotterer, R. L. (2002), “Student-Faculty Collaborations, Undergraduate Research, and Collaboration as an Administrative Model”, *New Directions for Teaching and Learning*, 90, Summer 2002.
  - Barkley, E. F., Cross K. P., & Howell Major, C. (2005), *Collaborative Learning Techniques: A Handbook for College Faculty*. John Wiley & Sons, Inc. San Francisco, CA

undergraduates studying business at a well-regarded U.S. university; they generated the ideas themselves, did the research, and helped develop both the cases and teaching notes. Rather than the traditional model of students responding to a predetermined ethical dilemma, the students have contributed to the construct and consideration of the dilemmas. Together, we have prepared a “complete package” that could be used by a faculty member to facilitate analysis in class.

## **2. The Pedagogical Approach: Collaborative Case Research, Writing, and Presentation**

Cases are ubiquitous in business schools. In addition to in-class case study assignments, many universities engage students in business ethics case competitions. Using a debate team-like format, selected universities mount teams of students who compete with similarly constituted teams. Typically, each team presents its research, analysis and recommendations to a panel of selected ethics practitioners and faculty members. In our work, we chose to turn this dynamic on its head. The faculty did not prepare the case studies. At the University of Notre Dame Mendoza College of Business we had the students research and propose the case studies. The students did the research and presented draft cases. We, the faculty sponsors, worked with the students in sharpening the ethical issues and problems inherent in their case narratives; based on the students’ research, we prepared the ethical analysis and teaching notes.

This case-writing project was several months in the making. Eight undergraduate students studying business were recruited from a required course in introductory business ethics. These students self-selected into the project and are a particularly diverse group: by gender, nationality, ethnicity, and life experiences. We were excited to see the tough issues they wanted to explore. After brainstorming possible topics and completing initial research, the students sorted into three teams and addressed three very different but equally interesting topics. They researched and wrote the cases and outlined key considerations for the teaching notes and analyses. The students also reviewed and added suggestions to the final drafts.

We are confident that the process was a valuable addition to the students’ business school experience at every step. As they worked, they consulted with both faculty and practitioner experts on the specific areas of their case studies. In addition to consistent communication with the two faculty directors, a management professor and an experienced ethics practitioner, students identified and interacted with other experts to learn more. One team met with a member of the finance department faculty for guidance on the IPO process, and a second team consulted with a practitioner contact of one of the project directors for advice about “on-the-ground” realities in their country context. This consultation experience provided valuable opportunities for the students to engage with a diverse group of experts in an interesting and meaningful way that required

integration of multiple disciplines, and articulation and synthesis of complex issues. In addition, the boundaries between faculty and students softened and the one-way exchange of information from teacher to student, characteristic of most interactions, was absent; all participants became learners, and then knowledgeable, together.

The nature of the interaction with the students was critical to the success of the project. Pedagogical approaches reflecting higher levels of student engagement incorporate active and collaborative learning, and the critical role of meaningful interaction with faculty.<sup>3</sup> We utilized a shared online space to exchange notes and drafts, met regularly in person as small groups and as one large group including all three case teams, and concluded the project with a celebratory dinner. These opportunities for student and faculty interaction were key to the experience for all involved. Classroom-based assignments, for example typical case-writing exercises in which students generate responses to pre-scripted dilemmas, are often incompatible with significant personal interaction. This level of engagement must be explicit and intentional. It was not onerous for the faculty directors. The students' enthusiasm carried the work from one meeting to the next, and the experience of our direction was gratifying to us both.

Importantly, the students did not receive a grade, compensation, or other immediate extrinsic reward for their participation; the course in which they were taught by one of the faculty directors had ended and grades had been submitted, and no academic credit was granted. When students were recruited, the project was described as an opportunity to engage in student-led case research and writing in collaboration with a faculty member and a high-level organizational ethics practitioner. Students were advised that the fruits of the project could lead to academic publication, recognition within their college of business and possible use by other scholars and students, but that the primary reward was the satisfaction gained from an engaging experience and a completed case. This motivation calls to mind research indicating high levels of intrinsic motivation in young students studying business in today's universities.<sup>4</sup>

In addition, the project required undergraduate student research, which allowed students to engage in the issues of their disciplines while avoiding the passivity of traditional approaches.<sup>5</sup> We did not provide reading materials or initial research direction to the students at the project's launch. We suggested they explore the international business press and they soon had thoughtful ideas. One team was inspired by an Op-Ed in the *New York Times*, and another by a

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3. Umbach, P. D. & Wawrzynski, M. R. (2005), "Faculty Do Matter: The Role of College Faculty in Student Learning and Engagement", *Research in Higher Education*, March, 46(2): pp. 153-184.
  4. McManus Warnell, J. (2015), *Engaging Millennials for Ethical Leadership: What Works for Young Professionals and Their Managers*. New York, NY: Business Expert Press.
  5. Dotterer, R. L. (2002), "Student-Faculty Collaborations, Undergraduate Research, and Collaboration as an Administrative Model", *New Directions for Teaching and Learning*, 90, Summer.

feature they had seen in class. They dove in and came to the subsequent meetings having read, thought about, and discussed their case topics. Their energy and enthusiasm were palpable. Three participating students went on to present their work at the annual undergraduate research conference, an opportunity for students from all disciplines on campus to share their research experiences and gain professional experience in scholarship and presentation. Their research was presented in a session exploring pedagogy and innovative approaches to standardizing educational experiences. This conference, often the province of students from outside the business disciplines, was a chance for students to engage with peers and faculty around meaningful, multidisciplinary inquiry. These presentations allowed the students to gain experience in scholarship presentation, exposure to peers from many different academic disciplines, an opportunity for networking, and a way to enhance their own resume.

After finalizing the cases, the students presented them to a group of multidisciplinary business faculty for their feedback and suggestions. The students had the opportunity to share their work with experts and to present their research in a professional setting. The faculty had an opportunity to engage with students outside of the classroom and participate in a conversational, thoughtful exchange with business students about critical and complex issues. The faculty directors received several notes of gratitude from the participating faculty for the opportunity to engage with the students in this unique and enjoyable way.

The student feedback on the project has been exceedingly positive. They expressed gratitude for the opportunity to work with faculty in this way, and for the chance to explore their chosen topics in more depth in partnership with their peers and scholars. Students noted they were able to integrate knowledge from previous coursework, noting such courses as “writing and rhetoric” and “business ethics” as particularly relevant, and remarking that “presenting the case boosted [their] confidence in making professional presentations, and presenting and writing the case allowed [them] to present “original research” and approach “ethics in an innovative way” (participant student feedback).

This pedagogical approach suggests specific issues that could be explored more fully. For just one example, the project inherently incorporated peer motivation and accountability rather than the often private process of traditional subject matter learning. Interdependent learning, self- and peer-direction, the promise of developing an externally-facing “product” of the learning, and high expectations for preparation and productivity from peers and faculty collaborators are characteristics of collaborative learning that are associated with meaningful and lasting learning.<sup>6</sup> Requiring assimilation of complex information from a variety of sources and demanding the application of diverse theories and concepts is essential in today’s complex, global business environment. We hope that this inaugural project can be enhanced to incorporate these explorations in the future.

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6. Barkley, E. F., Cross K. P., & Howell Major, C. (2005), *Collaborative Learning Techniques: A Handbook for College Faculty*. John Wiley & Sons, Inc. San Francisco, CA

We present the fruits of our project—three new case studies accompanied by analyses and teaching notes—in hopes that other faculty will find them inspiring, fun, and teachable. These materials should generate interesting, multifaceted, and dynamic analyses and discussion about topical business ethics issues. In addition, as business education increasingly and necessarily embraces an international focus, we have situated the cases within diverse and complex country contexts. We encourage faculty and students to look outward and foster a global perspective. The students selected hard-hitting and current topics: they were not shy about tackling morally complex problems. Perhaps not surprisingly, the topics reflected issues students and faculty alike see in the headlines, and issues with which the students had passing familiarity, a personal connection, or other “sparks” that caught their attention. We encouraged them to choose topics that intrigued them, for whatever reason.

These resulting three cases and teaching notes relate to international business ethics, including sourcing a rare earth mineral from the Democratic Republic of the Congo used in electronics manufacturing, relocating small business manufacturing to Uganda and employing women workers, and hiring of Chinese “princelings” by a global bank. Each case topic allows for consideration of both individual actions of the business people involved, and larger organizational and societal issues.

### **3. The Fruits of the Project: Three New Case Studies and Teaching Notes**

The product of our collaboration is three case studies in diverse and complex international contexts complete with teaching notes. The case narratives are two or three printed pages in length, and the teaching notes/analyses are an additional five to eight pages, which we hope can be readily incorporated into classes. The cases would be appropriate in courses on business ethics, but also other topics in management and finance including supply chain management, international management or finance, business law, human resource management, finance in emerging markets, and many other topics. Thus the cases are purposely not designed for use only in ethics classes, and include enough contextual material that faculty other than those teaching ethics can utilize them. Each case includes both legal and ethical considerations, and reference to an ethical decision framework. We hope this multidisciplinary approach can reduce some of the barriers to teaching ethics cases.

The cases can be taught together or independently and we see a broad potential audience of undergraduate- and graduate-level students. We were encouraged by the presentation session with a diverse group of experienced, multidisciplinary business faculty exploring the completed cases alongside the students; the discussions were rich and nuanced, evidencing the cases’ broad appeal. If the cases are provided as pre-reads, they could be discussed in one class session. Because they are manageable in length, they could be read and discussed

in one lengthier session. They also invite written consideration which might be useful in prompting a more detailed group discussion after reflection.

The cases conclude with some preliminary questions faculty can use to encourage written analysis and/or discussion. Then faculty can utilize the teaching notes as prompts for group analysis. The student authors and we determined early on that our teaching notes would not provide a “right” answer to the protagonists’ dilemmas—our approach is to pose interesting and provocative questions that enable students to consider their own decision-making processes and resolutions to tough situations. We hope this approach promotes discussion beyond “what should be done”—an often disabling space where undergraduates with little practical experience can flounder. Faculty can use our questions, incorporate their own, or invite students to take the discussion in other directions. We hope our questions are a useful starting point.

Despite addressing a diverse set of global issues of the students’ choosing, we hope the cases all reflect two broad considerations. We see the diversity of the cases as an advantage, illustrating the creativity and interests of our diverse student participants and reflective of a global perspective. To present the cases as a “total package” for use alone or together, we standardized the cases with inclusion of the three-level paradigm (individual, organizational and societal) and the brief consideration of the ethical decision model and behavioral ethics.

First, we prompt the reader to consider three levels of attention—individual, organizational, and societal—that are critical to ethical analysis of global business. Individual decision-making, organizational dynamics and processes, and societal impact are each the province of ethical business. Second, we include reference to ethical decision models and behavioral ethics in each note. Instructors can include discussion of the systematic reasoning along with discussion of barriers to ethical action in practical contexts. These considerations are critical to actionable ethical analysis.<sup>7</sup> We have explicitly called for considerations of ethical decision-making frameworks with an introduction to their key components. We acknowledge that determining “what should be done” is only part of ethical decision-making. Thoughtful decision-making acknowledges principles, rights and duties—philosophical or normative ethics—but also anticipating, recognizing and managing the multiple drivers and barriers (psychological, social, organizational) to acting on our decisions.<sup>8</sup> We leave students unequipped for effective ethical decision-making if we only prompt consideration of *what* should be done without acknowledgement of *how* to do it, in its given context. We hope that these prompts can lead to exciting discussion of real-world, contemporary business considerations.

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7. Gentile, M. C. (2010), *Giving Voice to Values: How to Speak Your Mind When You Know What's Right*. New Haven, CT: Yale University Press.

Bazerman, M. H. & Tenbrunsel, A. E. (2011), *Blind Spots: Why We Fail to Do What's Right and What to Do About It*. Princeton, NJ: Princeton University Press.

8. Ibid.

The process, for us, has been as enjoyable and meaningful as the product. As project directors, a teaching professor of management and an experienced international ethics practitioner, we brought different perspectives and contributions to the project. It has been a distinct pleasure to work together, and with these enthusiastic, thoughtful, committed students, who represent the best of what our emerging business professionals have to offer. We are grateful to the students for their commitment to the project. The success of the pilot project has prompted support from the Mendoza College of Business and the Notre Dame Initiative for Global Development for a second round of cases, currently in development with nine additional students, in the year ahead.

Finally, we hope that you, and your students, find these cases challenging and fun. Should you present any of these materials, we would appreciate receiving your feedback. We hope this project will inspire similar collaborations between business faculty and their students.

### **Case 1: A Payoff Worth More Than Money: Conflict and Coltan**

Tim Anderson clutched his briefcase close against the wind as he hailed a taxi on the corner of Broadway and 58<sup>th</sup> Street. He had just gotten out of work and was on his way home. He usually took the train to be eco-friendly, but the trains were delayed due to a new construction project. All of a sudden he was torn from his thoughts by an incoming call from a +243 number. It must be Dikembe Dabo, a business associate from the Democratic Republic of the Congo (DRC). Tim answered and was immediately greeted with “Monsieur Tim, my friend, I need your help.”

Tim had just started MicroPrime, making and selling microprocessors that are used in cellular phones, computers, and other kinds of technology. After years with established businesses, he spun off his own company using the technical skills, personal connections, and social responsibility ethos that he had gained since college. Although most of his career was spent in Silicon Valley, Tim started MicroPrime in New York City so that he could be more engaged with the leadership of the UN Global Compact, the world’s largest corporate sustainability initiative.

Aware of the many human rights and environmental issues involved in international business, Tim was careful in forming MicroPrime’s board and key management team. One of his mentors connected him to Dikembe Dabo, a Congolese supplier of the rare earth mineral coltan (columbite-tantalite) used in manufacturing microprocessors. With the many ethical and social problems surrounding the production of coltan<sup>9</sup> it was important to Tim to source as directly and transparently as possible.

Tim has been talking to Dikembe for almost a year about forming a long-term business relationship. Tim had visited the DRC several times. Dikembe has



property on the outskirts of Goma, a ramshackle city on the Eastern border. A stream on his property carries coltan, a mineral taken from open mines, extracted similarly to gold by panning rock through running water and mud. Dikembe has a large family of four sons and three daughters; everyone helps with the family mining business. When Tim visited Goma, he and Dikembe hit it off immediately. Tim found that Dikembe was well respected, giving back to the community in any way he could. Tim understood why he was so highly recommended by his former colleague.

Tim is concerned that the Dabo family mine lies in the conflict-ridden DRC. The area produces nearly a quarter of the world's coltan,<sup>10</sup> but the local and regional conflicts have effectively created a global black market. Armed warlords and their gangs illegally mine and sell conflict minerals to refiners. As a result, many major companies have shifted the sourcing to other more expensive, yet sometimes similarly troubled regions, like China and Australia.<sup>11</sup> The Dabo operation has historically been safe, but the tumultuous nature of the region leaves it at great risk.

Tim's face was ashen as he hung up the phone. It turned out that his initial fears were realized. When one of the many regional warlords heard about Dikembe potentially signing a big contract with a US firm, he stopped by the Dabo property to demand a protection fee under the threat of serious harm. Dikembe knows what happens to men who don't pay: their women are raped and their sons shot and maimed. He chose to call Tim to plead for an advance on his first shipment.<sup>12</sup> Lives depended on it.

#### Initial Reflections:

- What are the key problems that Tim must solve?
- What are Tim's rights, duties, and responsibilities?
- What are Dikembe's rights, duties and responsibilities?
- How do Tim's personal commitments influence his choices?

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9. It is estimated that between 500,000 and 2 million Congolese citizens work in small-scale mines, many of whom are locked in debt or forced to work under slave-like conditions by local warlords. The work is dirty, dangerous, and menial, but in a country racked by violence and instability there are not very many options. [http://www.thestar.com/news/insight/2011/07/03/coltan\\_a\\_minefield\\_in\\_the\\_congo.html](http://www.thestar.com/news/insight/2011/07/03/coltan_a_minefield_in_the_congo.html)
  10. <http://www.sciencedirect.com/science/article/pii/S0301420711000833>
  11. While China does have reserves of coltan, it also has mining operations in the DRC that sell through the Chinese marketplace. Although Australia has a significantly better track record for human rights, mining there is often at the expense of Aboriginal lands. Labor conditions in both of these places can be inconsistent and uncertain.
  12. Payment would be difficult, though not impossible. However, for Tim it may violate the U.S. Patriot Act for aiding terrorist activity and the U.S. RICO Act for aiding and abetting racketeering and protection schemes.

**Case 2: Continental Shift: What Kind of Leader Is Sam?**

It is January 2, at 1:00AM in the city of Detroit, Michigan. The only source of light in the kitchen is radiating from a computer screen. Sam Byman, brows furrowed and shoulders hunched, sits at the kitchen counter, poring over the company's dismal financial statements. Sam is the founder and CEO of BYM, a boutique textile and craft rug company located in Detroit. Late nights are routine for Sam, ever since the 2008 financial crisis hit the nation—and especially Detroit—hard. Since its inception in January 2000, BYM has based its main offices and factory production in Detroit, with storefronts across the United States and an online retail store. The company required a huge personal, emotional, and financial investment. Starting a business had always been Sam Byman's dream; watching it grow filled Sam with pride.

Today, sales have slowed and profits have turned into losses. Despite recent economic growth, BYM struggles to stay afloat. With dwindling cash reserves and rising costs of production in the U.S., Sam fears impending bankruptcy.

Unwilling to dissolve the business and dismiss all the employees, some of whom have worked for Sam since the beginning, Sam is considering possible next steps. As far as Sam can tell, the only options are to declare bankruptcy or to outsource production overseas to *any* location where costs are cheaper. A few weeks of Internet research yielded potential sites in Peru, Uganda, Cambodia, and India. Tentatively, Sam believes that Uganda is the most feasible. Sam's mother has just returned from a six-month stint of volunteer service in Entebbe. Moving to Uganda could work, because Sam's mother has a small but well-connected network there. Sam's mother volunteered with a halfway house in Entebbe where she worked with victims of domestic violence, a burden afflicting 43% of Ugandan women.<sup>13</sup> Entebbe, a large city located on Lake Victoria, has the infrastructural and economic ability to support manufacturing companies like BYM. Entebbe, home to Uganda's major airport and a sizable working-age population, offers plentiful opportunities for business growth for textile manufacturing.

Sam's research suggests Uganda is a resource-rich country, in a politically fraught environment. Uganda has the water and agricultural conditions for growing cotton—one of the primary resources that Sam needs to manufacture artisanal textiles and craft rugs. Most of the cotton is harvested by hand-picking. Uganda's agricultural sector requires intensive labor; this is not the country for large-scale mechanized or industrial scale farming.

Sam's mother talked about one woman in particular, with whom she had worked closely. Mary Latigo is a 25-year-old single mother in Uganda. Mary attended her local primary school but dropped out by age 14.<sup>14</sup> This is the reality

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13. <https://dhsprogram.com/pubs/pdf/FR264/FR264.pdf>

14. As of 2009, the completion rate for girls in Uganda was 48%. [http://www.unicef.org/evaluation/files/UNGEI\\_Uganda\\_Final\\_Report.pdf](http://www.unicef.org/evaluation/files/UNGEI_Uganda_Final_Report.pdf)

of education in Uganda: while almost all girls attend primary school, less than 1 out of 5 girls will continue with secondary education.<sup>15</sup> Biases against the education of girls are entrenched in cultural and economic norms;<sup>16</sup> parents often believe security for their daughters cannot be guaranteed by education, but only through early marriage.<sup>17</sup> Mary's parents arranged a traditional betrothal and subsequent marriage when Mary was 17<sup>18</sup> to a man who became abusive.<sup>19</sup> This is not unusual—like many Ugandan women, Mary accepted the beatings for years.<sup>20</sup> It was only after she realized that she could not protect her own children from her husband's angry violence that she finally decide to leave. Mary never received justice for her husband's abuse under Uganda's legal system.<sup>21</sup> Now she lives on her own and struggles to provide for herself and her three young children in a patriarchal and predominantly tribal society.

By relocating to Entebbe, Sam could hire workers like Mary—relatively young, unskilled laborers who would be willing to work long hours for low wages.<sup>22</sup> Running low on funds and out of options, women like Mary may be willing to take regular paying manufacturing jobs in order to provide much-needed economic stability.

Sam thinks relocating production to Uganda may be a viable alternative. Yet Sam is reluctant to abandon Detroit. Over 100 loyal employees would lose their jobs at BYM, whether or not Sam chooses to keep headquarters in Michigan. By moving production overseas Sam would lose all the financial subsidies and tax incentives that Detroit has offered to develop local businesses.<sup>23</sup> If production is moved to Uganda, a temporary personal relocation to Entebbe is inevitable. Sam is reluctant to leave behind immediate family and friends. Sam cannot predict the reactions of BYM's private investors to a decision to move overseas. Additional loss of funding is the last thing BYM needs. New facilities in Entebbe would require additional funding. Finally, moving production overseas could raise

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15. [http://www.unicef.org/infobycountry/uganda\\_statistics.html](http://www.unicef.org/infobycountry/uganda_statistics.html)

16. "The National Development Plan observes that discrimination against women in Uganda results from traditional rules and practices that explicitly exclude women or give preference to men, which serves as a key constraint on women's empowerment and economic progress." National Development Plan 2010/11-2014/15 (Republic of Uganda, 2010)

17. In Uganda, nearly 1 out of every 2 girls is married before the age of 18 (Girlsnotbrides.org).

18. Among women age 20-49, 15 percent were married by age 15, and 49 percent were married by age 18. (2011 UDHS) <https://dhsprogram.com/pubs/pdf/FR264/FR264.pdf>

19. Domestic abuse is pervasive in Ugandan society; 43 percent of ever-married women report experiencing physical violence committed by their current or most recent husband or partner. (2011 UDHS)

20. A staggering 70% of Ugandan women justify physical abuse they receive from their husbands (e.g., leaving the house without permission, burning dinner). <http://www.un.org/esa/socdev/ageing/documents/egm/NeglectAbuseandViolenceofOlderWomen/Violence%20against%20women.pdf>

21. Some women in Entebbe are fined by police in order for them to arrest their husbands on domestic abuse charges. <https://www.hrw.org/reports/2003/uganda0803/6.htm>

22. [http://www.ilo.org/wcmsp5/groups/public/-dgreports/-dcomm/documents/publication/wcms\\_212423.pdf](http://www.ilo.org/wcmsp5/groups/public/-dgreports/-dcomm/documents/publication/wcms_212423.pdf)

23. <http://www.detroitmi.gov/How-Do-I/Obtain-Grant-Information/Business-Tax-Incentives>

entirely new challenges for BYM's entire supply and transportation chain. But the research on Uganda leaves Sam cautiously optimistic. This could be the only way to keep the business alive and employ some hard working and deserving people.

The future of BYM is Sam's choice. Sam is torn between collapsing the business, which would trigger substantial financial losses and displace employees, or moving production overseas. By moving production to Uganda and tapping into a large pool of women for manual labor, Sam will have new choices to make when it comes to employment practices and worker compensation. Sam has to decide which goals take priority.

Initial Reflections:

- What are the decisions Sam might make? Which choices are the most ethically viable and which are the most financially viable?
- How do these choices challenge Sam's moral integrity?
- Upon additional review of this case study, you may realize that we did not specify a gender for Sam. What were your perceptions of this particular CEO? Did you make any assumptions about gender? What if we told you "Sam" was indeed Samantha? Would your interpretation of Sam's actions and future decisions be any different?

### **Case 3: The Princess-ling**

*March 17, 2012 (Ying)*

Ying Li walked buoyantly down the street toward her apartment. She had just completed her first week working as a risk management analyst for WJ Capital in Shanghai. She couldn't be happier. After spending four years in New York City studying business at Columbia University, Ying was now working at the bank of her dreams, in her hometown. As she walked in the door, Min, her father, greeted her. Min owned a chemical company, Li Chemicals, which had seen tremendous growth in the past three years. His new penthouse apartment was just one of the visible marks of her father's success. As Min's only child, Ying was used to privilege. Even now, at age 23, she lived with her father, enjoying the standard of living his success could provide.

*April 14, 2012 (Jason)*

It had not been a good day for Jason Brown, former banking rock star, and yesterday's news. A month ago, he was on track for a promotion to vice president at WJ Capital's Wall Street office. WJ Capital is one of the three largest players in the global financial sector. Jason had been the one to watch. Now, standing

outside that iconic building, Jason saw someone else move into the corner suite. His deal with American Entertainment had fallen through. WJ Capital had lost millions. Jason knew that it wasn't entirely his fault. As leader of the team working on the deal, he took the full brunt of the blame.

Soon, Jason would transfer to WJ Capital's Shanghai office for another stint managing a group of dealmakers. But this was not at his own request. He realized that the Shanghai office was small and intimate; everybody would know everyone else's position and their connections in the local business community. Ever the optimist, Jason bet it would take only one big deal to turn his fortunes around.

#### *October 10, 2012 (Jason)*

Jason was already a few hours into his work day when he got the first call from his good friend, Bruce, who directed WJ Capital's risk management office in Shanghai. The threat of the Chinese government moratorium on the IPO market had become the new reality. Usually, Jason dismissed Bruce's concerns as the worries of an 80 year old trapped in a 35-year-old body. But this time, Bruce had nailed it. News stations exploded as the Chinese government disallowed the launch of any new stocks until further notice.

Jason had just opened the file on a company called Li Chemicals. He may have been transferred to Shanghai, but at least the Chinese market was hot. Competition for investments was fierce, and he was certain that if he could just complete one big deal he would be back on top. He kicked back in his chair sighing, and put the file aside. He would have to wait until the government reopened the IPO market before he would know if this company was the one.

#### *December 30, 2013 (Min)*

Min walked with pride into the WJ Capital office where his daughter worked. Min knew that WJ Capital was one of the top investment banks in the world.

Min took pride in his ability to read the political and financial landscape of China. After fifteen years of patient work, Min was ready to take Li Chemicals public. He was eternally grateful for the opportunity his government had offered to privatize part of China's natural mineral wealth. With the tacit support of Party officials, Min had seen doors open before him. Min had always cultivated cordial working relationships with government officials, who could simultaneously encourage Li Chemicals and erect barriers to foreign competition. The State held a modest 19% stake in Li Chemical.<sup>24</sup> With a party official serving on his company's board of directors, Min was led to believe that the ban on IPOs would not last much longer. Soon, the government would be ready to lift the ban.

This was Min's first opportunity to decide whether he wanted WJ Capital to assist Li Chemicals in its IPO. Min's underlings had attended all previous conversations with the investment bankers. Min rode the elevator to the twenty-

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24. Nicholas Lardy (2014): *Markets over Mao: The Rise of the Private Sector* (Washington D.C.: Petersen Institute for International Economics).

third floor, where he had expected Jason Brown to meet him as soon as the elevator door opened. After a five minute wait, Min found an office labeled “J. Brown”. Min walked into the office, and introduced himself. After an inauspicious beginning to the meeting, Min felt some optimism. Jason seemed to understand that the IPO, first and foremost, had to be of great benefit to China and Li Chemicals. They began to discuss the details of what Jason promised would be a “highly profitable IPO on all sides of the table”. But underneath Jason’s confidence, Min sensed that Jason could not afford for this IPO to fail. Jason was too eager, too solicitous, and too willing to speak without first thinking. After explaining that he planned on holding very few shares of Li Chemical stock, Min added, “My family’s reward will be the good reputation of Li Chemical.”

*January 23, 2014 (Jason)*

Jason was giddy. The Government had just reopened the IPO market in Shanghai. It wouldn’t be long before the Li Chemicals IPO would send him straight back to the top. WJ Capital’s internal analysis predicted that this deal could be the most profitable IPO Shanghai had seen in the last decade. Jason was hell-bent on making sure this was true. With only weeks until the IPO launch, Jason prepared for that final grinding effort. He knew that pressure from both sides would push the prices, and he wanted to make sure he opened Li Chemicals at the right price to ensure the launch was as successful as his experts had predicted. He would often ask Ying to deliver messages to her father. By asking her questions regarding Li Chemicals’ business financials, he was eager to take advantage of her “insiders’ perspective” on her father’s business. She didn’t seem to share his excitement, which he thought was odd. Even so, Jason was not about to let this ruin his good mood. Soon, he would be back in New York, polishing the name plate outside that executive suite on Wall Street.

*January 24, 2014 (Bruce)*

After another thirteen-hour work day, Bruce needed a drink. He walked the three blocks between the office and his favorite bar in an area popular with expats and visiting business people. After ordering and taking a seat, he heard a familiar voice. He did not believe his eyes. It was his good friend Megan, who he hadn’t seen since grad school at the University of Pennsylvania. They chatted for hours recapping their adventures after leaving Philadelphia. Megan told Bruce that she was now head of office at SwedeBank, another investment bank in Shanghai. “They hired me to replace a manager who just got the boot.” Megan said. “Apparently he was involved in some kind of nepotism, hiring the son of a government official. You know, like a bribe. It was pretty messy. Talk about walking into a soap opera.”

January 25, 2014 (Jason)

The next morning, Jason walked into his office, surprised to see Bruce there. “Jason, I’m worried. I talked to a friend last night, and found out that she just replaced a manager who was fired from SwedeBank for hiring a princeling<sup>25</sup>. You know, we could be in similar hot water for employing Ying Li while you are working on her father’s IPO.” Jason couldn’t believe it. He knew Bruce worried about everything, but even for him this seemed like a stretch.

Bruce went on, “I’ve done some research, and it looks like we’re in a grey area as far as the FCPA<sup>26</sup> is concerned.” He pulled out a file and read aloud, “‘It shall be unlawful for any issuer... or for any officer, director, employee, or agent of such issuer or any stockholder thereof acting on behalf of such issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to... any foreign official for purposes of... assist[ing] such issuer in obtaining or retaining business for or with, or directing business to, any person.’ I’m worried that hiring her could be seen as some kind of payment to her father, to keep his business.”

Jason sat back and looked at Bruce. “Just for once, Bruce, could you stop working for the Office of No You Can’t!” Jason understood what Bruce was saying, but he was certain that their situation was too ambiguous for a court to convict *him* of any wrongdoing. Ying had been with the company before he had even arrived. He did not want to ruin his big chance to go back to the top of the corporate ladder, and he certainly did not want the suspicion of anything even mildly unethical to thwart his plans.

Initial Reflections:

- What are the key issues here? What facts do you know and what do you wish you knew?
- What are Jason’s rights, duties, and responsibilities at this point?
- How does this situation look to a neutral, objective observer?
- How do you describe the ethical issues that this case presents?

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25. The term “princeling” was coined in the first part of the 20<sup>th</sup> century, to describe the rise of leaders who were the sons of high-ranking Party officials or veteran revolutionaries. It continues to be used to describe privileged children of highly placed government or industry officials, who achieve unusually high-ranking positions at young ages.

26. The Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, et seq. (“FCPA”), was enacted for the purpose of making it unlawful for certain classes of persons and entities to make payments to foreign government officials to assist in obtaining or retaining business.

### **Case 3: The Princess-ling: Contextual Considerations**

#### *U.S. Bribery and Anti-Corruption Legislation*

In the United States, the Foreign Corrupt Practices Act (FCPA) regulates business actions with the goal of eliminating bribery and corruption of foreign officials. This law's regulations apply to any U.S. or foreign corporation that has issued securities in the U.S., any individual that is a citizen, national, or resident of the U.S., and any corporation or other business entity organized under the legal system of the U.S. or any U.S. State. Both the Securities and Exchange Commission (SEC) and the Department of Justice take part in enforcing the FCPA. This legislation makes it unlawful for any of the organizations or individuals covered by the FCPA to make a personal payment to foreign officials, whether government or business officials, for the purpose of receiving or keeping their government's business, or directing their business to any other person or organization. This legislation is concerned with intent, not the amount of the bribe, so, if accused, a defendant must prove that there was no intent to keep, obtain, or redirect the business of a foreign official.

#### *Chinese Regulation*

Chinese anti-corruption provisions are largely contained in the Anti-Unfair Competition Law of the PRC (People's Republic of China) and the Criminal Law of the PRC. The Anti-Unfair Competition Law prohibits commercial bribery and unfair conduct in commercial settings punishable by economic and administrative sanctions. Commercial bribery and unfair conduct include giving and receiving bribes for the purpose of selling or purchasing goods.

#### *Princelings*

Princelings, also referred to as the Crown Prince Party, was a term first used to describe the descendants of prominent and authoritative senior communist officials in China. Nowadays, princelings are those generally understood to be benefitting from nepotism and/or cronyism in both political parties and business enterprise. Many senior leaders or managers in high-level positions often admit their children or relatives to the workplace directly or indirectly without formal authorization. Sometimes, the senior leaders are able to provide beneficial jobs for their children or relatives in the same enterprise, which later will lead to the creation of a family firm. Other times, another enterprise is willing to offer jobs to the children or relatives of the senior leaders in order to build or sustain a good business relationship. It can be beneficial to both of the enterprises involved in this relationship due to the promise of future collaboration. This cozy set of relationships can also lead to serious problems with corruption and bribery.

#### *Guanxi*

Guanxi refers to a popular cultural phenomenon in Chinese business practices. The core idea involves relationships between or among individuals creating



ongoing reciprocal obligations for the continued exchange of favors. The problem with princelings may also be related to this phenomenon. Guanxi plays an important role in the Chinese cultural norm since it provides a tight and diverse interpersonal network, which is essential in all business practices. It can serve to expedite and streamline interactions between companies, especially in privately-owned organizations. It can also be used as a strategic resource or tool for the organization to facilitate long-term efficient exchange and enter the competitive market easily. However, some behaviors, such as gift-giving and entertainment, may be used as a foundation for creating and sustaining guanxi among individuals and companies. Thus, it may lead to corruption and violation of fiduciary duties. Nowadays, due to increasing competition, a more comprehensive legal framework and collaboration with foreign companies, the importance of guanxi is diminishing and it is less prevalent in business transactions.

#### *Investment Banking Ethics Code*

WJ Capital has a strict ethical code of conduct for its employees. This code of conduct includes the following measures:

- All employees must engage in and promote ethical conduct, including handling apparent or actual conflicts of interest in an ethical manner. Additionally, any such conflicts should be reported to the Office of the Secretary.
- All responsibilities should be carried out honestly and with integrity, while exercising proper judgment at all times.
- All employees must ensure that all reports are disclosed fully, fairly, accurately, and understandably. This applies to any form of public communication that the firm participates in.
- All employees must comply with all government laws, rules, and regulations, be they at the federal, state, or local level.
- Employees must report any violation of this code of ethics or other violations of integrity to the firm's audit committee.
- No employee should take any action to directly or indirectly coerce, manipulate, or mislead external auditors while they review any of the firm's financial statements.

## **APPENDIX A**

### **Analysis & Teaching Note**

#### **Case 1: A Payoff Worth More Than Money: Conflict and Coltan**

##### *Forward*

This case presents great opportunities for classroom conversations about how to:

- Virtuously manage a business supply chain.
- Sustain one's personal values and ideals through business.
- Ensure legal and regulatory compliance on a global basis.

Assuming that we agree on these goals as fundamental in today's global business environment, can Tim Anderson achieve all three?

##### *Overview*

Tim Anderson, a self-made entrepreneur with deep commitments to social and community responsibility and sustainability, is faced with an immediate ethical dilemma. Does he forward money to an individual with whom he is beginning to forge business and friendship ties, knowing that the funds he sends could well be used to pay off warlords demanding protection money? Tim's technology business requires a steady supply of coltan, a rare-earth mineral that is mined amidst violent human rights abuses, war crimes, civil and religious strife, and civil disobedience.<sup>27</sup> If Tim forwards funds to a potential and likely supplier, he may ultimately support domestic terrorism within the Democratic Republic of Congo (DRC). Yet, by forwarding funds, Tim may feel that he is acting virtuously, discharging his duties of justice, non-injury, loyalty and compassion. To whom is Tim responsible? No matter how strongly Tim wants to forge business and collegial relationships with his intended Congolese supplier, by forwarding funds will Tim have violated significant U.S. criminal statutes?

In making ethical decisions, we often need a framework for principled reasoning.<sup>28</sup> Such frameworks can help us think clearly and illuminate considerations that are obscure or difficult. Using such analyses, we can acknowledge stakeholders and our obligations to them, explore resources that can provide guidance on our specific situation (i.e. codes of conduct, legal

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27. See: Sutherland, Ewan, & Coltan, "The Congo and Your Cell Phone" (April 11, 2011). Available at SSRN: <http://ssrn.com/abstract=1752822> or <http://dx.doi.org/10.2139/ssrn.1752822>

28. See McManus Warnell, J. (2015), *Engaging Millennials for Ethical Leadership*. New York, NY: Business Expert Press, Appendix C.

requirements, trusted allies, institutional or personal support), carefully consider reasonable alternatives, and ask whether our resulting decisions will stand as precedent for future considerations. The goal of such systematic analysis is to equip the decision-maker with a reasoned, thoughtful and principled decision-making methodology.

Ethical decision-making starts with considering “what should be done.” But it does not stop there. Effective decision-making involves anticipating, recognizing and managing the barriers (psychological, social, and organizational) to acting ethically. Considering “what should be done”, and reflecting upon the barriers to right action get us only part of the way forward. We must also seriously consider how to take action in the given context in which we are operating.<sup>29</sup> We explore some of these considerations in the notes and analysis below.

### *Teaching Notes and Analysis*

Let’s recall the basic facts. Dikembe Dabo is a small land-owner and businessman in the DRC. Dikemebe has been accosted by a local warlord who demands money in return for “protection” from armed interference and violence. With his own family’s lives and security at stake, Dikembe appeals to Tim Anderson for money to pay off the warlord. This situation may seem physically distant to Tim, but it is exactly that distance which makes his decision so challenging. Tim must evaluate a reality that he does not experience every day.

Social justice in the DRC is hard to come by. Not only is DRC located in the hotbed of political chaos and insecurity of East Africa’s Great Rift Valley, but it also is one of the more mineral and resource-rich countries on the continent. Tim has chosen to build his supply chain in the DRC and is now posed with the consequences of this decision. Tim is a socially responsible businessman, with a history of integrating his values with his entrepreneurship.

As an entrepreneur, Tim has faced and will continue to face many tough decisions. The future of his business rests on his choices about what he produces and how he does it. But the repercussions of his actions affect more than just himself and his business. Tim’s investors, employees, suppliers, consumers, and their communities are all affected. Tim’s new company is profitable, growing, and private. His supply chain must be global, in order to obtain the rare earth minerals that are critical to his manufacturing process.<sup>30</sup> His markets are international. In considering Dikembe’s request, Tim must consider his

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29. See Gentile, M. C. (2010), *Giving Voice to Values: How to Speak Your Mind When You Know What’s Right*. New Haven, CT: Yale University Press.

30. Columbite-tantalite—coltan for short—is a dull metallic ore found in major quantities in the eastern areas of Congo. When refined, coltan becomes metallic tantalum, a heat-resistant powder that can hold a high electrical charge. These properties make it a vital element in creating capacitors, the electronic elements that control current flow inside miniature circuit boards. Tantalum capacitors are used in almost all cell phones, laptops, pagers and many other electronics. <http://abcnews.go.com/Nightline/story?id=128631&page=1>

company's and his personal responsibilities for virtuous supply chain management.

Tim and Dikembe both face urgent and intense choices. Dikembe's home, family, personal safety and security are dramatically threatened by local warlords demanding informal "tax" or protection monies. This is racketeering and intimidation in its most brutal and violent form. Dikembe has valuable minerals on his property. Visits from an American businessman have heightened community scrutiny and knowledge. Dikembe has not (and indeed could not) keep his developing business relationship with Tim from notice by his neighbors and the Eastern DRC business communities. Dikembe's realities as a business person are far different than the challenges which Tim faces. Dikembe's world is far more influenced by tradition, family, community, and tribal relationships than Tim has experienced. Dikembe has responsibilities to multiple individual and group stakeholders.

One way to start the dialogue is to place ourselves in Tim's shoes, and ask: "What is the primary goal of MicroPrime?" On one hand, Tim may say that the purpose of business is to improve itself and turn a profit. From this perspective, the fates of Dikembe, his family, his mine, and his community in Goma are not strongly relevant. Tim should make his decisions based on rational self-interest, examining the costs, harms, disadvantages, benefits, and advantages due MicroPrime. From this perspective, his primary concern is avoiding legal repercussions. On the other hand, Tim may say the purpose of his business is to advance human progress, by doing good and doing well at the same time. Realistically, he may fall somewhere between these two positions.

Much of the literature regarding virtuous supply chain management follows this centrist path. The Organization for Economic Cooperation and Development (OECD) recently published a report on "Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas".<sup>31</sup> It proposes a five-step framework for companies that source conflict minerals like columbite-tantalite. The model is based on:

1. Establishing strong company management systems.
2. Identifying and assessing risks in the supply chain.
3. Designing and implementing a strategy to respond to identified risks.
4. Carrying out third-party audits of supply chain due diligence at identified points in the supply chain.
5. Reporting on supply chain due diligence.

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31. <http://www.oecd.org/daf/inv/mne/GuidanceEdition2.pdf>

OECD writes for larger corporations. Can this framework help guide Tim's business decisions? Should Tim be held to a different and more lenient standard because he is a small entrepreneur competing for relevancy, market share and impact? How should we characterize Tim's risk assessment for obtaining a legal and stable source of coltan? Should Tim begin to question the wisdom of sourcing coltan anywhere in the DRC? Are there other sources, more stable, less violent, and rarely prone to human rights violations? Does the very nature of his business merit examination? Certainly, we can challenge Tim's efforts to date to obtain rare earth minerals necessary for his company's manufacturing processes. Where is Tim currently obtaining these minerals, if not from the DRC?

As in many tough situations, the law provides only some guidance. According to U.S. law, under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Section 1502,<sup>32</sup> publicly owned corporations are required to disclose if they source any conflict minerals from the Democratic Republic of the Congo and describe their due diligence practices regarding the sourcing, mining, and refining of such conflict materials. No such regulation exists for smaller, privately owned companies. Moreover, disclosure of due diligence, including risk assessment and audit certification, is different from deciding to obtain rare earth minerals from a family-run open mine.

What precisely is Tim's relationship with Dikembe and his community in Goma? As the case is written, Tim has yet to sign a formal contract with Dikembe for mining, refining, and transporting coltan. Tim has indicated his intention to develop a long-term relationship with Dikembe. He has invested considerable time and effort in getting to know his supplier. Yet, we must ask how extensive was Tim's research if he was surprised by Dikembe's urgent phone call. Tim likes and respects Dikembe, and sees mutual benefit to their partnership. To what extent is MicroPrime and its president, Tim Anderson, responsible for the wellbeing of a critical supplier, Dikembe Dabo? By traditional business ethics standards, employees have legal, contractual, and moral rights that employers are responsible for upholding. However, the traditional "arms length" supply chain adds another layer of ambiguity. Even if Tim and Dikembe formalize their business relationship, Dikembe will never be an employee of MicroPrime.

DRC has mining laws and regulations. DRC has a criminal justice code. Yet, enforcement is weak throughout the country, reflecting the diminished power of the central government.<sup>33</sup> Contractual matters are more than just the right to due process. The liberal model of business's responsibility to create an ethical workplace is based on conditions that tend to encourage and advance human good

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32. <https://www.sec.gov/spotlight/dodd-frank/speccorpdisclosure.shtml>. Section 1502 of the Dodd-Frank Act requires publicly traded companies to disclose annually whether any conflict minerals that are necessary to the functionality or production of a product, as defined in the law, originated in the Democratic Republic of the Congo or an adjoining country and, if so, to provide a report describing, among other matters, the measures taken to exercise due diligence on the source and chain of custody of those minerals, which must include an independent private sector audit of the report that is certified by the person filing the report.

and well-being, and respect the right of each individual to make reasoned and autonomous choices.<sup>34</sup> But when Dikembe is physically threatened by an external force, how reasoned and autonomous are his choices? To what extent is Tim responsible for the non-injury of Dikembe? Does it depend on how much helping Dikembe may hurt Tim's own business?

We have walked, proverbially, in Tim's shoes. Is it possible to imagine what it is like to walk in Dikembe's shoes? Unlike Tim, Dikembe has limited choices about where he does business. As a miner, property owner, and local businessman, Dikembe does not have Tim's luxury of relocating all or part of his business operations to another country or continent. At the same time, Dikembe is a respected member of the community in which he operates—which provides distinct advantages of access, knowledge, familiarity with custom and business mores, and credibility.

Now, let's change the facts ever so slightly. Suppose Tim and Dikembe have signed their agreements and have begun a more formal business relationship. Suppose further that Dikembe is ready to prepare his first shipment of coltan.<sup>35</sup> With a more formal business relationship, Tim and Dikembe each rely upon the other to deliver what they have promised. Does the reality of contractual reliance and promised performance influence the balancing of mutual rights, duties and obligations?

Tim does not have a legal obligation to do business with Dikembe, but as a global businessman in the 21<sup>st</sup> century, he may have an ethical one. Tim and Dikembe have each invested in building a relationship, working to create trust, confidence, and mutual reliance. Dikembe may see their relationship less as a legal convenience and more as an expression of community and affiliation.

Suppose that Tim walks away from Dikembe, then what? Can his business be considered ethical if its profit and asset acquisition betray the people with whom he works? It seems obvious to us that Tim has a social contract with Dikembe and his family. Is that a sufficient justification for Tim to forward funds that he can be reasonably certain will be used to promote criminal activity in the

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33. See: UN Security Council reports and resolutions, including: S/2012/843:Report of the Group of Experts on the Democratic Republic of the Congo to the Security Council pursuant to Resolution 1533 (2004) concerning the Democratic Republic of the Congo; UN Security Council Resolution 2021 (Adopted November 2011); UN Security Council Resolution 1533 (Adopted March 2004).

34. [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)  
This publication contains the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", which were developed by John Ruggie, former Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises.

35. Mining coltan is a dirty, dangerous, and primitive business. It is mined from open pits, where crews of workers physically sluice muddy water to separate ore bearing rocks from other run-off. Once mined, coltan must be refined before shipment. And in the fractured, politically unstable, and desperately poor areas of eastern DRC, it can be extremely difficult to differentiate between legitimate mining operations and those run by criminal enterprises.

DRC? Or are there other options which Tim is morally obliged to consider? To pay or not to pay is not the only question, here.

We can also explore more fully the impact of the law on Tim's choices. Though the conflict minerals disclosure and due diligence provisions found in Dodd-Frank may not apply to MicroPrime directly, other US laws—especially criminal statutes—do. The US PATRIOT Act and other federal criminal statutes make it unlawful to finance, or provide financial assistance to organized crime, terrorism (domestic and international), and racketeering.<sup>36</sup> Protection payments are illegal. Once Dikembe has asked Tim to advance him funds in order to “pay off” local warlords who will allegedly “protect” his property and mine, Tim is on notice of how Dikembe intends to use funds that Tim may provide. It matters not whether there is a formal supply contract between Tim and Dikembe at this point. Under US law, and possibly under DRC law as well, Tim would be seen as aiding and abetting a criminal enterprise.<sup>37</sup> The reasoning behind these laws is similar to that which cautions against paying kidnapping ransoms to terrorists. Payments made directly or even indirectly through middlemen are ultimately being used to support illegal activity. No matter how sympathetic Tim may be to Dikembe's plight and no matter the degree of responsibility that Tim holds for Dikembe's situation, forwarding any sum to Dikembe at this point could expose Tim to substantial criminal penalty. We struggle to articulate a compelling ethical argument that would elevate social responsibility obligations over obedience to the law.

Tim's decision has far reaching consequences, this much is clear, but what his decision will be is not. Taking into account the social, organizational, and

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36. <http://www.justice.gov/archive/ll/highlights.htm>

37. [http://www.justice.gov/archive/opa/pr/2007/March/07\\_nsd\\_161.html](http://www.justice.gov/archive/opa/pr/2007/March/07_nsd_161.html). The long-running litigation facing Chiquita Brands International is right on point. In 2007, Chiquita Brands pled guilty to engaging in transactions with a global terrorist organization known as the United Self-Defense Forces of Colombia (“AUC”). The company paid a \$25 million fine. The investigations leading up to Chiquita's guilty plea revealed that the company paid money to the AUC for over six years, following a meeting between the company's Colombia-based subsidiary and the then leader of the AUC. The subsidiary was led to believe that failure to pay the AUC would lead to physical harm to company property and company personnel.

Chiquita knew that the AUC was a violent, paramilitary, foreign terrorist organization. Chiquita senior executives were on notice from their outside counsel to immediately stop paying the AUC directly or indirectly. The Board chose not to withdraw its banana plantation operations from Colombia but directed management to disclose the payments to the US Department of Justice. In April 2003, Chiquita Brands voluntarily disclosed to the U.S. Department of Justice that it was making payments to the AUC. Notwithstanding advice of counsel and the admonition from the US Department of Justice that what they were doing was illegal, Chiquita continued to pay the AUC though early February 2004.

The comments of the US Department of Justice in announcing the company's guilty plea are very instructive. “Funding a terrorist organization can never be treated as a cost of doing business. . . . But like adjustments that American businesses made to the passage of the Foreign Corrupt Practices Act decades ago, American businesses, as good corporate citizens, will find ways to conform their conduct to the requirement of the law and still remain competitive.”

individual goals and decisions for his business, Tim must make a rational ethical decision. How can we help Tim do the right thing?

## APPENDIX B

### Analysis & Teaching Note

#### **Case 2: Continental Shift: What Kind of Leader Is Sam?**

##### *Forward*

This case presents an opportunity to explore several critical and contemporary ethics issues, including:

- How ethical decisions are really made by business leaders;
- Whether our own gender-based presumptions influence how we detect ethical issues in business;
- The fallacy of “either/or” decision-making; and
- The intersection between corporate social responsibility and the post-colonial reality of many of our world’s newer nations.

##### *Overview*

Sam Byman has concluded that BYM, a small privately held textile and rug company founded in 2000, cannot both remain in its home city of Detroit, Michigan *and* stay afloat. Sam has explored off-shoring all or part of the company, and seems to think that Entebbe, Uganda would be a good place to relocate. Sam is strongly invested in BYM, both financially and emotionally. Sam is singularly drawn to Uganda, where labor is cheap and where women need economic stability and safe jobs.

In making ethical decisions, we often need a framework for principled reasoning.<sup>38</sup> Such frameworks can help us think clearly and illuminate considerations that are obscure or difficult. Using such analyses, we can acknowledge stakeholders and our obligations to them, explore resources that can provide guidance on our specific situation (i.e. codes of conduct, legal requirements, trusted allies, institutional or personal support), carefully consider reasonable alternatives, and ask whether our resulting decision could stand as

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38. See McManus Warnell, J. (2015), *Engaging Millennials for Ethical Leadership*. New York, NY: Business Expert Press, Appendix C.



precedent for future considerations. The goal of such systematic analysis is to equip the decision-maker with a reasoned, thoughtful and principled decision-making methodology.

Ethical decision-making starts with considering “what should be done”. But it does not stop there. Effective decision-making involves anticipating, recognizing and managing the barriers (psychological, social, and organizational) to acting ethically. Considering “what should be done”, and reflecting upon the barriers to right action get us only part of the way forward. We must also seriously consider how to take action in the given context in which we are operating.<sup>39</sup> We explore some of these considerations in the notes and analysis below.

### *Teaching Notes & Analysis*

What kind of leader is Sam? And more importantly, how does Sam make decisions? What facts does Sam assemble? How does Sam describe the choices that face BYM? And finally, what are the questions that Sam ought to ask and answer, but has not yet considered?

What facts do we know? Sam worked hard to create a new small business offering artisanal and boutique textiles and craft rugs. BYM, Sam’s eponymous company, was born and bred in Detroit, and—we assume—took advantage of the city’s willingness to keep small businesses afloat during the economic malaise of the last decade. BYM has more than 100 employees, many of whom have worked for BYM since 2000.

Sam fears bankruptcy. The financials are not promising to maintain BYM on a “business as usual” basis. Relocating the company or outsourcing production and manufacturing looks attractive. Uganda, a country about which Sam knows next to nothing—but one where Sam’s mother recently volunteered—could be the answer to Sam’s proverbial prayers. Sam focused on one potential worker, named Mary Latigo, whose history of domestic violence and daily survival challenges, haunt Sam. Sam assumes that Mary and others like her would be capable low skilled workers willing to accept long hours, low pay, predictable employment, and relatively safe working environments. Sam is confident that by relocating BYM, female workers like Mary can improve their livelihood.

The Ugandan workforce is cheap when compared to the labor market in Detroit: under \$2.00 a day,<sup>40</sup> with qualified women looking for work.

Uganda, a landlocked country in East Africa, has an inconsistent record when it comes to labor reform and basic human rights.<sup>41</sup> There is a 25% child labor rate and 43%<sup>42</sup> of women experience domestic abuse. The minimum wage is

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39. See Gentile, M. C. (2010), *Giving Voice to Values: How to Speak Your Mind When You Know What’s Right*. New Haven, CT: Yale University Press.

40. <http://worldpolicycenter.org/countries/uganda/policies/adult-labor-and-working-conditions>

41. For more information on the political situation in Uganda, please see Political Post Script below.

42. <https://dhsprogram.com/pubs/pdf/FR264/FR264.pdf>

extremely low, making Uganda attractive to a company looking for inexpensive labor.

### *Focusing on Sam's Decision-Making*

An initial set of questions focus on Sam's decision-making style. From the facts presented, Sam appears a bit impetuous and easily influenced by the most recent information obtained. The research upon which Sam must base decisions about the future of BYM does not appear deep and substantial. Sam's desire to provide jobs to Ugandan women who have suffered from domestic violence is commendable. Sam is not merely giving lip service to social justice: Sam is seriously considering uprooting BYM and relocating to Entebbe, a city and country completely foreign to a native Detroit. By relocating manufacturing to Entebbe and possibly other business functions as well, Sam may be able to serve two beneficial goals—one societal and one entrepreneurial.

By exploring Sam's motives, research, assumptions, and decision-making style, what can we learn about how leaders make decisions in real time? Do we think that Sam's decision-making is typical for entrepreneurs? To what extent does, or should, social justice impact Sam's decisions? Does our assessment of Sam's decision-making change if we assume that Sam has a history of championing social justice and fair employment practices in Detroit? What if we assume that Sam's interest in social justice is a recent whim?

What are Sam's rights, duties and responsibilities? To whom does Sam owe duties of loyalty, fairness, equity and respect? Should Sam factor national loyalty into the decision-making calculus about the future of BYM? To what extent does Sam have moral obligations to Detroit? Can Sam calculate harms and benefits from the two stark choices identified so far?

### *Gender-Based Assumptions*

Next we examine the question of gender. So far, we have been very careful not to assign a gender role to Sam. Is "Sam" the diminutive for Samuel or Samantha? Does our assessment of Sam's decision-making style change if we believe that Sam is male? Is Sam's interest in women's labor issues and domestic violence in Uganda more understandable or even easier to explain if Sam is female? How does our assessment of rights, duties, and responsibilities shift if we know Sam's gender?

How do we, as neutral observers, impose our own gender biases (recognized as well as unconscious) on our assessment of Sam's decision-making style? Does Sam "feel" more feminine or masculine? To what extent might this matter?

On whose behalf does Sam operate BYM? From what we know, owning a company has been Sam's personal dream. Can Sam afford to make these decisions without regard to others who care about the outcomes of those decisions? Who else has a stake in Sam's decisions? And, how significant are those other stakes? Under what circumstances can or should Sam seek out the view of these stakeholders? How do you imagine BYM's current Detroit-based

workforce would view Sam's concerns about domestic violence in Entebbe, Uganda?

### *Either/or Choices*

Sam views the conundrum as binary: stay in Detroit and face bankruptcy or relocate all or part of BYM to Entebbe, Uganda and start afresh. We can see how appealing either/or choices are: they are simple; they compare two polar opposites; they are the next best thing to questions that can only be answered with a simple "yes" or "no". For those who abhor complexity, either/or choices are attractive. However, most business decisions are complex. When considering the ethical dimensions of these decisions, we need to be wary of either/or choices.

Ethical decisions require us to navigate the boundaries between stark choices. Ethical decision-making can make us uncomfortable, especially if we like knowing that we have made the "right" choice. An either/or choice is a clear signal that we may not be reflecting deeply enough to discern the moral choices that must be made. It's a truism: ethical decision-making requires us to navigate the grey zone, between the polar opposites of black and white. Employing moral imagination and envisioning creative solutions that are "outside the box" may illuminate alternatives that are both financially and ethically viable.

Are business decisions really all that simple? How did Sam fall into such simplistic thinking? What other choices does Sam realistically have?

Under the assumption that Sam is aware of the working conditions in Uganda, would it be ethical to move operations overseas? How do we factor into our analysis economic stability for BYM's own employees within the United States? How do you quantify the benefits of saving U.S. employees' jobs or bolstering the Ugandan economy and mitigating the hardships experienced by Mary Latigo and other women in similar situations?

Does Mary Latigo's back story help you navigate the decisions that Sam faces? Does this type of stakeholder personification amplify or reduce compassion? If we had not learned about Mary, or the social environment in Uganda where domestic violence is accepted, would we care as deeply as we do about Sam and the future of BYM?

### *Post Colonial Manipulation or Social Responsibility at Its Best*

Uganda's history, since gaining independence from Great Britain in 1962, has not been easy or pretty. Regardless of Sam's ethnicity, in Uganda Sam will always be an outsider from the North and West. If Sam relocates to Uganda, will Sam be seen as heir to Uganda's history of colonialism, or as part of the emerging new nation known as Uganda? If BYM relocates to Uganda, how should Sam operate to avoid exploitation? What assumptions should Sam clarify before proceeding?

The World Bank, in 2009, issued a paper on the Cotton Sector in Uganda. The opening paragraph of the Executive Summary foreshadows one of Sam's challenges:

During the 1960s, Uganda was Sub-Saharan Africa's largest cotton producer. However, political instability and poor policy choices of the 1970s led to the sector's precipitate decline. While attempts to revive the sector with lending operations during the 1980s failed, policy reforms combined with a lending operation and high cotton prices revitalized the sector in the 1990s. Nevertheless there remains the sense that the sector lags behind its full potential. Various reports have linked this chronic underperformance to low quality of cotton, lack of domestic textile industry, and low use of purchased in-puts due to lack of rural credit as the key constraints. This paper argues that the fundamental problem of Uganda's cotton sector is its low profitability, which reflects the displacement of cotton by food crops. *Furthermore, the earlier success of the sector reflects, in part, the fact that cotton was grown under forced labor conditions.*"<sup>43</sup> [emphasis added]

### *Concluding Thoughts*

When we think about this case, we come to the conclusion that Sam needs to do considerably more research into choices and options. Sam's heart may be in the right place; but Sam's rational and ethical decision-making needs more attention. For a concluding discussion question, you might want to list what else it is that Sam needs to know before making *any* decision.

### *Political Post Script*

The political situation in Uganda has been marked with internal strife following Uganda's formal independence from the United Kingdom in 1962. Since that date, the country has endured despotism and near economic collapse. Since its independence from Britain in 1962, the east African nation has endured a military coup, followed by a brutal military dictatorship under Idi Amin, disputed elections in 1980 and a five-year war which brought current President Yoweri Museveni to power in 1986. President Museveni has been in office more than a quarter of a century, having first seized power at the head of a local rebel group that ousted Idi Amin in 1979.

The country has also had to contend with a brutal 20-year insurgency in the north, led by the Lord's Resistance Army (LRA). While the country has won praise for its vigorous campaign against HIV/AIDS it has also attracted international criticism for its hardening stance against the LGBT community.

President Museveni stood for election in February 2011, receiving 68% of the vote. This occurred after Uganda's constitution was amended to remove the previous term limits on how long the Ugandan president could serve in office. His National Resistance Movement (NRM) ran Uganda as a one-party state until a referendum brought back multi-party politics in 2005. He won presidential elections in 1996, and again in 2001, 2006 and 2011.

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43. [http://www.worldbank.org/afr/wps/WPS\\_123\\_Uganda\\_Cotton\\_Case\\_Study.pdf](http://www.worldbank.org/afr/wps/WPS_123_Uganda_Cotton_Case_Study.pdf)

The government has been criticized for failing to take action against corrupt government officials. It has also been criticized for informally and indirectly intervening in the internal affairs of its neighbor, the Democratic Republic of Congo, and aiding anti-government rebels.<sup>44</sup>

Against this background, the country held local and national elections during February 2016. Mr. Museveni was opposed by seven other candidates for President. He faced criticism from the West over Uganda's worsening human rights record, and responded by accusing Western donors of interfering in Uganda's internal affairs.

CNN reported on 20 February 2016:

Ugandan President Yoweri Museveni extended his 30-year grip on power Saturday after the election commission declared him the winner despite an outcry from the opposition.

Preliminary figures showed the incumbent with 62% compared to 34% for his closest competitor, opposition leader Kizza Besigye. But Besigye's party, the Forum for Democratic Change, rejected the results and demanded an independent audit of the elections. Besigye is under house arrest, with no one is allowed in or out to see him. Elections officials are scheduled to announce the final results sometime later this weekend. The country had a voter turnout of 63%, according to the election commission. (<http://www.cnn.com/2016/02/20/africa/uganda-election/>)

## **APPENDIX C**

### **Analysis & Teaching Note**

#### **Case 3: The Princess-ling**

##### *Forward*

This case presents an opportunity to explore several cutting edge ethics issues, including:

- What motivates business people to act ethically;
- Whether and when it is morally acceptable to hire the children of business associates, potential customers, or government regulators;

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44. For additional political background information, see in general the web sites of the U.S. Department of State, the U.K. Foreign Ministry Office, and major news organizations. This section relies in part on compendia summarized by the BBC, at: <http://www.bbc.com/news/world-africa-14112299>

- How government systems, national politics, culture, and the global conduct of business compete, intersect, and influence critical business decisions;
- Exploring how ethical and compliance-focused mindsets interact within the rough and tumble of everyday business decisions.

### *Overview*

In this case, we see an unfolding drama with four characters: Jason Brown, a Wall Street deal maker, seeking to make his name and fortune shepherding IPO's; Min Li, CEO of Li Chemicals; Ying Li, his daughter and WJ Capital employee; and Bruce, head of the WJ Capital risk management office. The case takes place in Shanghai, just as the People's Republic of China ("PRC") suspends new IPO's.

All four are proud, eager, entrepreneurial, and focused on their own personal agendas. Jason has recently relocated to Shanghai from New York, restarting his career trajectory once again by leading a group of deal makers with WJ Capital. He makes friends quickly with Bruce, head of WJ Capital's Shanghai based risk management group. Jason has targeted Li Chemicals as an excellent IPO prospect. Jason wants to take Li Chemicals public; he plans to make his fortune and secure a bank vice presidency. Jason has met with Min Li, CEO and founder of Li Chemicals. Min is a self-made entrepreneur, with strong political and party ties throughout the PRC. Min's daughter, Ying, works for WJ Capital, as an entry level risk management analyst. Ying is an only child, eager to please, hard working and happily enjoying her father's largesse.

In making ethical business decisions, we often need a framework for principled reasoning.<sup>45</sup> Such frameworks can help us think clearly and illuminate considerations that are obscure or difficult. Using such analyses, we can acknowledge stakeholders and our obligations to them, explore resources that can provide guidance on our specific situation (i.e. codes of conduct, legal requirements, trusted allies, institutional or personal support), carefully consider reasonable alternatives, and ask whether our resulting decision could stand as precedent for future considerations. The goal of such systematic analysis is to equip the decision-maker with a reasoned, thoughtful and principled decision-making methodology.

Ethical decision-making starts with considering "what should be done". But it does not stop there. Effective decision-making involves anticipating, recognizing and managing the barriers (psychological, social, and organizational) to acting ethically. Considering "what should be done", and reflecting upon the barriers to right action get us only part of the way forward. We must also seriously consider how to take action in the given context in which we are operating.<sup>46</sup> We explore some of these considerations in the notes and analysis below. Following

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45. See McManus Warnell, J. (2015), *Engaging Millennials for Ethical Leadership*. New York, NY: Business Expert Press, Appendix C.

the Case Narrative, we offer brief synopses of key laws, regulations, codes, and business practices that may (or may not!) be relevant.

## Teaching Notes

### *Motivation*

We have enough hints and facts to explore our four protagonists' motivations. In ethics, motivation matters because it drives behavior. We cannot peer into anyone's soul. Yet, we can ask why business people act as they do—and often, the answer to that question lies in motivation.

Jason is relatively easy to decipher. He is young, eager, driven, and goal obsessed. He has made his career at WJ Capital by being agreeable and by taking risks. He has learned to accept responsibility for the consequences of unsuccessful business decisions and is willing to retool and start over. If nothing else, Jason is flexible—and makes sure that he is seen as adaptable and resilient by his colleagues and superiors.

Bruce is next. As a banking risk management expert, it is his job to apply the brakes when necessary. Having a legal and regulatory framework provided by the countries where WJ Capital operates gives Bruce the context within which WJ Capital can conduct its business legally and ethically. When Bruce adds the Bank's Code of Conduct, he is comfortable providing advice. Yet, he is ever cautious that his role is advisory: he cannot make business decisions, and he cannot advocate for or represent any interest other than the bank's. He is quick and agile, and an adept networker throughout the global banking community.

Min Li is cautious, proud, and respected. Having learned how to be a capitalist in the 1990s, he practices "connections capitalism".<sup>47</sup> Min is willing to forge relationships with government and party officials—at all levels—as well as with members of the private sector if by doing so he can succeed as both a business man and as someone who is seen as having access and capable of exercising political power.<sup>48</sup> Min is willing to use political connections to advance his own commercial interests—and ensure his family's well being in a turbulent economy.

Finally, we consider Ying Li, Min's only child. Ying is bright and ambitious in her own right, pleased with her academic work at a prestigious private U.S. university, delighted to work for a major bank, and thrilled to continue living at

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46. See Gentile, M. C. (2010), *Giving Voice to Values: How to Speak Your Mind When You Know What's Right*. New Haven, CT: Yale University Press.

47. Nicholas Lardy (2014): *Markets over Mao: The Rise of the Private Sector* (Washington D.C.: Petersen Institute for International Economics), pp. 119-122.

48. "Guanxi" refers to a popular cultural phenomenon in Chinese business practices. The core idea involves cultivating a network of relationships among individuals that create mutually beneficial obligations that can result in the continued exchange of favors. See: Dunfee, Thomas W. & Warren, Danielle E. (2001), "Is Guanxi Ethical? A Normative Analysis of Doing Business in China", *Journal of Business Ethics* 32: 194-204.

home. She is the product of privilege and sees no reason to apologize for the life she wants to lead.

How do the lives of these four individuals intersect? What are their similarities and what are their differences when it comes to the conduct of business—specifically international banking? What do we find that is praiseworthy? What do we find that leaves us uncomfortable? Are there villains or heroes in this case? How is each character shaped by country, culture, experience, and education? Where are they likely to communicate well and where are they likely to miscommunicate? What are their likely blind spots?

### *Hiring Sons and Daughters*

Let us assume that Ying Li is an accomplished and well qualified entry-level bank employee. Let's further assume that she was hired by WJ Capital several months before Jason Brown transferred to the Shanghai Office, and well before WJ Capital identified Li Chemicals, her father's firm, as a possible IPO target client. On the facts presented, Jason is well aware that the daughter of his target client works for his bank, and is part of the risk management group. Jason goes further and seeks out Ying for information and insight into her father and his company. He asks Ying to transmit messages to her father, on behalf of himself and the bank.

From an ethical point of view, is this relationship one that gives rise to real or potential conflicts of interest? Does Jason compromise his own position and that of Ying by asking Ying to act in the bank's best interests (e.g., her work in risk management) as well as to act as a spokesperson for one of the bank's top clients? Is it realistic to place the burden on Ying's young shoulders to resist Jason's inquiries and requests? What are Jason's and Ying's rights, duties, and obligations? Do you feel that Ying *can* continue to work at WJ Capital? *Should* she continue to work for the bank that represents her father in taking Li Chemicals public? What concrete steps should she take?

We will next focus on Ying's father, Min, and his web of connections, particularly Min Li's relationships with the Communist Party and the government of PRC. This will require some knowledge of the intersection between the party and the private sector. Visible to most by the 1990s, China began to privatize parts of its economy, by shifting ownership from the state to certain private and municipal interests. In the words of *The Economist*, "Chinese companies, like companies everywhere, do best when they are privately run. In China, however, the state is never far away."<sup>49</sup> It is safe to assume that Min Li is a member of the Communist Party and has likely held official government positions in his career. He may have deep connections with the government, even as he takes privatized assets and converts them into private wealth.

By hiring and retaining the daughter of a presumed government official and party member, is WJ Capital offering a bribe? By hiring princelings<sup>50</sup> and "princesslings"—the sons and daughters of highly placed government officials or



leaders of state-owned businesses—are banks using the obvious benefits of employment to solicit new government customers, induce more favorable business deals, and retain existing clients?<sup>51</sup> As Bruce quotes to Jason, giving something of value to a person who is a foreign official, for the purpose of receiving or keeping their business, is a crime under US law.<sup>52</sup> Chinese law may also apply, here, as the PRC has adopted stringent anti-corruption laws, which can be vigorously enforced.<sup>53</sup>

Knowing what we do, should the Bank continue to represent Li Chemicals in its IPO bid? Can the Bank continue to discharge its duties under these circumstances? What is the right course of action for Jason, who professes to want to avoid any action that might appear to be unethical, lest his chances for promotion be harmed?

### *Ethics and Compliance Considerations*

Before we close, let's also consider the bank's own Code of Conduct. Here are some excerpts from the code of conduct adopted by J.P. Morgan Chase Co. (2015 edition), after which WJCapital's own code of conduct was modeled.

### *Ethical Business Practices*

*In addition to compliance with applicable laws and regulations, we expect all employees to hold themselves to the highest standards of ethical conduct. We strive to treat all customers in a fair, ethical and non-discriminatory manner and work to achieve a competitive advantage through superior products and services, never through unethical or illegal business practices.*

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49. <http://www.economist.com/node/21528262>, Capitalism Confined: Privatisation in China, September 3, 2011, from the print edition. Privatisation moves government owned resources into private hands; however those hands are frequently those of current or former government officials. "Early signs of success led to modification of the rules on the ownership of companies. In 1995 the State Council endorsed a policy to "retain the large, release the small" [state-owned and state-controlled enterprises]. In 1997 it approved a huge shift of ownership from the central government to municipalities with the explicit goal of expediting privatizations. These changes provided the foundation for the dramatic efforts in the late 1990s of Zhu Rongji, the then prime minister, that are reputed to have remade China's economy. The short version is that Mr Zhu closed thousands of companies and broke the "iron rice bowl", a guarantee of living standards for the masses, in an effort to shake China out of economic lethargy. Between 1995 and 2001 the number of state-owned and state-controlled enterprises fell from 1.2m to 468,000 and the number of jobs in the urban state sector fell by 36m—or from 59% to 32% of total urban employment. A longer version is that the process involved many more companies and has never ceased, and that the method has changed constantly. As some companies were transformed or closed, others were created, with various forms of state backing. The result has been non-stop experimentation with incentives and structures. Privatisation remains a thorny issue in a country where private property became a constitutional right only in 2004 and where the right to own productive assets remains unclear. Many vibrant, purely private companies have sprung up despite this uncertainty, but take care to stay out of the limelight."

### *Anti-Bribery, Anti-Corruption*

*Our reputation for integrity is central to the success of our business. We must never compromise our reputation by engaging in, or appearing to engage in, bribery or any form of corruption. The Anti-Corruption Policy reaffirms our zero tolerance for bribery. The Anti-Corruption Policy states that you may not give, offer or promise (directly or through others such as family members) anything of value to anyone, including government officials, clients, suppliers or other business partners, if it is intended or could reasonably appear as intended to obtain some improper business advantage. You also may not solicit or accept anything of value from anyone (directly or through others such as family members) if it is intended or could reasonably appear as intended to improperly influence your decisions on behalf of the bank. You are also prohibited from providing anything improper to anyone through a third party intermediary for an individual or company engaged to interact with other third parties on behalf of the bank in order to:*

- *obtain or retain business or other advantage; or*
- *obtain government actions or approvals.*

### *Avoiding Conflicts*

*You are responsible for avoiding activities or relationships that might affect your objectivity in making decisions as a bank employee. Never permit your personal interests to conflict—or appear to conflict—with the bank’s interests. If you are faced with a potential conflict of interest, ask yourself:*

- *Would public disclosure of my action (or relationship) cause me or the bank embarrassment?*

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50. Princelings, also referred to as the “Crown Prince Party”, was a term first used to describe the descendants of prominent senior communist officials in China. Nowadays, princelings are those generally understood to be benefitting from nepotism and/or cronyism in both political parties and business enterprise. Many senior leaders or managers in high-level positions often include their children or relatives to the workplace directly or indirectly without formal authorization. Sometimes, the senior leaders are able to provide beneficial jobs for their children or relatives in the same enterprise, which later could lead to the creation of a family firm. Other times, another enterprise is willing to offer jobs to the children or relatives of the senior leaders in order to build or sustain a good business relationship and promote future opportunities. But the hiring of “princelings and “princesslings” can also lead to serious issues of corruption and bribery.
51. In this case, our case study mirrors reality. As of January 2016, there is an on-going investigation into the hiring practices of J.P. Morgan in China. According to the *Wall Street Journal*, “[F]ederal investigators are looking for evidence that J.P. Morgan violated the Foreign Corrupt Practices Act by giving jobs to Chinese government officials’ children in return for lucrative investment-banking assignments. Other banks are also under investigation for such hiring.”

- *Would the action (or relationship) lead an outside observer to believe a conflict might exist, even if it actually doesn't?*

*It's not possible to list every situation that could present a potential conflict, but there are certain areas where conflicts typically arise. You should be familiar with these, use good judgment and ask for help whenever you are unsure of the proper course of action.*

The Bank's Code of Conduct is Bruce's forte. What portions of the bank's code apply to these facts? How should Bruce interpret the Code? What advice should he give Jason at this point? Does the Code provide Jason, Ying, and Bruce with sufficient guidance on what is the best course of action? Why or why not?

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52. In the United States, the Foreign Corrupt Practices Act (FCPA) regulates business actions to ensure that bribery and corruption do not exist. This law's regulations apply to any U.S. or foreign corporation that has issued securities in the U.S., any individual that is a citizen, national, or resident of the U.S., and any corporation or other business entity organized under the legal system of the U.S. or any U.S. state. Both the Securities and Exchange Commission (SEC) and the Department of Justice take part in enforcing the FCPA. This legislation makes it unlawful for any of the organizations or individuals that fall under those previously mentioned categories to make payment to foreign officials, whether government or business officials, for the purpose of receiving or keeping their business, or directing their business to any other person or organization. This legislation is concerned with intent, not the amount of the bribe, so, if accused, a defendant must prove that there was no intent to keep, obtain, or redirect the business of a foreign official.
  53. Chinese anti-corruption provisions are largely contained in the Anti-Unfair Competition Law of the PRC and the Criminal Law of the PRC. The Anti-Unfair Competition Law prohibits commercial bribery and unfair conduct in commercial settings punishable by economic and administrative sanctions. Commercial bribery and unfair conduct include giving and receiving bribes for the purpose of selling or purchasing goods.

