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Money Does Not Come Free

Adrian Borbély & Calvin Chrustie

This case tells the tale of three childhood friends turned entrepreneurs who create a company in the field of medical prosthetics. The products they sell could have military applications. Like many start-uppers and despite little business acumen, they need funds to develop their business, and end up dealing with venture capitalists and wealthy investors.

A series of events lead to the founders' loss of control over their company and its hostile takeover by agents of a potentially hostile country. Their innovation, developed in a Western country for the purpose of helping disabled people, may end up being used in a Super Soldier program by the scientific arm of a foreign nation's armed forces.

The case study aims to trigger reflections on the fragility of the financing systems provided by capitalism, and how nefarious actors may play the capitalist game against them.

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Keywords: Hybrid warfare – Capitalism – Venture capitalism – Protection of strategic industries – Naivety – Lawyers – Hacking of innovation – University partnership – Lawfare

MONEY DOES NOT COME FREE

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Disclaimer

This case is inspired by real events; however, the story, characters, company names and incidents portrayed in this document are fictitious. China is cited as the nefarious State-actor, as the country and its institutions have been accused of similar activities in the past.[2]

Setting the stage

Mike, Angela, and Roberto have been friends since preschool and truly became inseparable after being tasked with organizing their middle school yearly charity run. Since then, they have been bound by the strongest of all friendships. All three were brilliant students, promised bright futures, and were born and raised in the same neighborhood of a posh suburb in a Western nation.

After high school, Angela studied biology as an undergraduate and then went to medical school, as she always dreamt of being a healer. This is linked with her family history: she witnessed her grandmother struggle with chronic asthma while her father, who was injured at work on a construction site, lost most of the use of his left arm. Mike was a heavy video game player as a child; he naturally chose computer programming as his college major. Roberto was much less certain about what to do with his life; but since he was excellent at math and interested in physics, he chose an engineering curriculum.

The three took a chance and applied to university programs in the same large urban area; fortunately, all three were accepted. Naturally, they decided to rent a flat together, to keep their friendship alive and together discover what adult life has to offer. Even so, at no point did they get romantically involved with one another. They sadly returned the keys of their apartment when the boys graduated and took jobs a few hundred kilometers away. Angela then moved into a smaller flat while finishing her medical studies.

The scene now shifts to several years later. One evening, they met to celebrate Angela's completion of her residency at a local hospital. With a few friends, they had a fancy meal, plus a few cocktails, and finally went to Angela's place for a bottle of champagne. Once their friends left, the three of them sat in the small living room and reminisced about the

[1] The authors wish to expand their gratitude to Yan Alperovych, Professor of Finance at emlyon business school, for his wise advice regarding the financial mechanisms at play in this scenario.

[2] See for example: https://www.ft.com/content/cedfc2cf-209e-4af6-97f5-56fca6ebdb56

past years. Mike and Roberto complained about their boring jobs and autocratic bosses, while teasing Angela about her passage into employed life.

When Mike jokingly suggested they find a business idea they could all get involved with, all alcohol effects seemed to disappear, and the conversation suddenly turned serious. Putting their inalienable friendship at the heart of an entrepreneurial adventure: what a great idea! They ended up brainstorming ideas much of the night, as they were too excited to consider going to bed.

Around 4 AM, Angela mentioned her dream to invent a device that would help disabled people such as her father with everyday chores. Since his accident, her father had struggled with certain tasks, unable to carry heavy loads with only one fully functioning arm, or to perform precision tasks such as sawing, drilling, or hammering nails. Sleep finally caught up with them at that time and they fell asleep, Angela barely managing to walk to her bedroom, the guys crashing where they were sitting.

The next day, over fresh coffee, Roberto started explaining how recent progresses in robotics could help with Angela's dream. He told his friends about a class he took where Professor Anna Mitchell showed early work on exoskeletons: an outside structure mimicking the structure of human joints and bones, used to build human-like robots. Could such an idea be developed specifically to support non- or malfunctioning limbs and relieve disabled people from their handicap?

Over the next weeks, the three friends spent their evenings FaceTiming to discuss what could be done and had not yet been brought to market. They all had a hard time concentrating on their daily work, turning all their brainpower toward these evening meetings. They also spent weekends together at Mike's parents' suburban house, using every flat surface to draw schematics and to place post-its with more or less realistic ideas.

After two months, they knew what they wanted to create: mechanical exo-structures for injured or malfunctioning human limbs, that would enable victims of strokes or accidents to perform regular tasks. They were confident that between them they had the key skills to achieve such goals. Angela could do needs assessments with disabled people and supervise fitting and training on new devices; Roberto could build prototypes and program 3D printers and machines to produce industry-quality parts for tailor-made prosthetics; Mike could program the computer chips that would control the devices' movements and efforts.

Solving the money equation – episode 1

Angela, Roberto, and Mike live in a Western, capitalist Nation with a strong culture promoting entrepreneurship. Much like their parents before them, they all have well-paid jobs that provide them with more than they need to live comfortably. However, achieving their business objectives will force them to quit their jobs, hire human resources (esp. computer programmers and machining experts) and invest in production capabilities. Although they could reach the proof-of-concept stage in their spare time and on their savings, going further would require a lot of funds.

So, this is what they did: they founded and registered a company named a.r.m. prosthetics[3] ("a.r.m." being a double reference to one of the human limbs and their first-name initials), of which each owned a third. They drew up detailed designs and paid lawyers to register their trademark and submit patent applications in the EU, the USA, Canada, Australia, and New Zealand. They initiated an informal collaboration with Mike's *alma mater*, Professor Mitchell being excited to offer her help in running tests and experiments – asking only for name recognition for herself, her lab, and the university. Then, the three partners started drafting loan and subsidy requests. However, getting a loan from a bank proved impossible, considering the risks associated with such a business venture at its earliest stage of development.

They decided to take their inventions on the road and presented them in various entrepreneur conventions to test the market and look for investors. Prof. Mitchell suggested they participate in the *Concours Lépine*, the most prestigious European invention competition, which takes place annually at the *Foire de Paris*. They did not win, but they met several "angel investors", some of whom seemed willing to help them secure funds.

This is how they were introduced to the glorious, yet intimidating world of early-stage (or "angel") venture capital. After a few discussions, they were offered financial support in exchange for shares of their company. More precisely, they met with a business angel from their homeland, Steve, who was looking for new opportunities to invest in innovative companies. He offered them a good deal, in their view at the time: 500,000 dollars in return for 19% of the shares (each founding partner retaining 27%), which placed the company at a 2.6-million-dollar valuation. The offer stated that Steve would provide guidance and support for the next two years, with the help of his team. From the beginning, the investor pact clearly stated that Steve would be allowed to divest in 24 months' time. To explain the deal in simple terms: in two years, Steve could expect to get at least 3 times his investment (1.5 million dollars or 19% of the valuation of the company at that time, whichever is the higher number). If the exit clause was activated, should the company or the remaining shareholders not be able to reimburse him, he could take control of the company, either to operate it as he saw fit, or to sell its assets to reimburse himself. Steve assured the partners this was a typical provision in such agreements, and somewhat optimistically, they took his word for it. The contract then had an intricate mechanism in which the exit fee follows a logarithmic curve (strong incline at first, the riskiest period, going flatter over time as failure risk decreases).

In part because of lack of funds, in part because they trusted Steve and did not feel the need, neither the three founders, nor the company as an entity, had comprehensive legal guidance, a standard practice among start-up companies. The company would purchase advice *ad hoc* when it seemed needed and pay attorneys per mission, mostly to submit applications for trademarks and patents. At that stage, the founders did not order a full due diligence but asked junior attorneys, friends from college, to confirm that the terms

[3] The company name is purely fictional. Several companies, worldwide, use similar names. None of them was used as a model for this case. All confusion should be considered purely accidental.

of the investor pact seemed standard. They told them that nothing stood out as out of the ordinary.

They were quick to sign the paperwork and get to work, with the support of a great team of consultants, all employed by their new partner and keen to give them "sound advice" on how to grow their business. In addition, the company used this new capital to secure an additional half-million dollars in State subsidized loans (with 0% interest rate).

With the first round of financing now secured, Angela and the boys threw themselves body and soul into the company. They quit their jobs, rented industrial space, purchased machines, and hired a dozen technicians. They relied on business school interns as their sales force, and they started to trigger interest from wealthy disabled people, who could afford these revolutionary, yet expensive prototypical prosthetics.

A civilian invention with military applications

Months after hitting the market, someone suggested contacting their homeland's Veterans Administration to see if a partnership was possible to provide prosthetics to injured soldiers returning to civilian life with crippling disabilities. Of course, they would have to sharply reduce their prices to make their products affordable to this less fortunate population, but this could be compensated, at least in part, by quantity, considering the number of wounded ex-soldiers returning from the many recent armed conflicts. Veterans could offer proof of concept for their innovations and were likely to volunteer to serve as testers for further research. Such a partnership could also give a Corporate Social Responsibility image to the company. A meeting at the Ministry of Defense was set up to present potential collaboration ideas.

Later, Angela received a phone call from a General of their homeland's armed forces, who wanted to pay the company a visit to discuss possible military applications for their products. Sitting around the company's conference table, the four partners listened to the General explain how enhanced prosthetics like those produced by a.r.m. prosthetics could be used by the armed forces for at least two purposes:

- Increase the abilities of regular soldiers: reinforced legs and arms could enable them to carry heavier loads by foot and to resist the recoil of heavy machine guns (that currently must be anchored to the ground or fixed on a heavy vehicle to be used in combat).
- Enable some injured soldiers to remain on active duty: for now, a soldier with a disabling wound is either retired or reassigned to purely administrative duty. However, most of them would return to the battlefield if given the physical ability to do so.

After the meeting, the partners pondered this opportunity. Steve wanted to sign a wide-ranging contract with the military, as it would put the company on a great trajectory and practically guarantee its success over time. The three founders were more circumspect, attached to their initial objective of helping the weak and worried they would become part of the military-industrial complex. Participating in some "super soldier" program was not in their DNA. They stood their ground, despite Steve's pressure. This was their first open disagreement: voices were raised, and doors slammed.

Angela, Mike and Roberto consulted Prof. Mitchell, now retired, who pointed out her surprise that the General did not mention robots. Is it possible that the Army's vision could be so short-sighted? Their products (granted: with 20 more years of R&D) could have potential application as military operations robots: drone weapon and supply delivery systems, perhaps eventually even drone soldiers.

Angela, Roberto and Mike estimated that the company could prosper without such a partnership. They therefore politely declined the Army's offer, while promising to continue working with veterans in the future. Steve was fuming.

At around that time, the company suffered what looked like a minor cyber incident. Apparently, one of the interns had opened an infected attachment that contaminated his mailbox and ended up paralyzing all the company's email communications. The tech support offered by the anti-virus provider whose system was installed on their computers was able to solve the issue and restore backups, but they lost some important unsaved work and emails. No one was able to identify if any of the company's data was compromised, beyond emails.

This scare led the four partners to hire a Chief Technology Officer, whose mission would be to coordinate the programming staff and, most importantly, to ensure the integrity of their information systems, especially the proprietary technical data. The best candidate for the job was a university colleague of Mike's, who accepted to work part-time for a.r.m. prosthetics while building his own cybersecurity company. Han, of Chinese descent, was born and raised locally; he would receive a smaller salary than what the sector would typically offer, but his compensation also included shares: 3% of the company. This was Steve's idea: add a minority shareowner who would sit at Board meetings, organize exchanges among partners and mediate potential disagreements among them.

Solving the money equation – episode 2

In all these adventures, the company burnt through cash too fast compared to what it could recover through sales. After two years of full-speed operation on all fronts – marketing, sales, innovation, etc. – and still reeling from the refusal to sign with the Army, Steve requested to cash out his investment.

This came somewhat as a surprise, as the founders had hoped Steve would grant them an extension; after all, together with his team, he had been working enthusiastically on their project. But Steve refused to reconsider, as he was now interested in directing his funds toward the growing field of AI.

Neither the company, nor the founders had the funds to pay for his exit from the company. Time was pressing. Should Steve not get his money back rapidly, he would be allowed to sell his share on the market (bringing in new investors that the original founders did not know, and could not oppose), or start selling the company's assets (machines and patents), therefore crippling it. In such a short period of time, they did not have time to organize a new round of equity. Either they could borrow the money (unlikely), or they needed to bring in a new investor; otherwise, they would lose control of their company.

Luckily, Han explained that he had an uncle in Singapore who is a magnate of various industries, including real estate and shipping, with companies registered in Singapore, Malaysia, and Hong Kong. Getting close to retirement age, Mr. Lim was transitioning from hands-on industrial management to a more laid-back portfolio management. Han asked whether he could test his uncle's interest in buying out Steve's shares at a price based on the current company valuation (around 9 million dollars), which would represent an investment of close to 1.7 million, netting Steve his expected profit (plus a bit more.)

The founders met with Mr. Lim and his board over Zoom and had a chance to explain their business, its perspective, and their expectations for a financial backer with global connections, hoping they would find someone with a rather hands-off approach to investment. After Steve, they wanted to retrieve part of the freedom of movement they had lost.

Lim quickly sent a team of consultants to run his due diligence. Impressed by the company's positioning and perspectives, and convinced by Han's supportive argument, he happily agreed to invest in the company. He bought Steve's shares at market value and substituted for him on the initial investor pact; as such, he took over all the rights and duties of the previous investor, including the right to divest after two years. Only the amount of presumed profit changed, to reflect the reduced risk as the company was now a going concern. Once the paperwork was signed freeing Steve from a.r.m. prosthetics (and vice-versa), the founders opened a bottle of champagne and toasted to a new, different future.

The first months of the new collaboration were uneventful. The company's accountants reported monthly to Lim's board of directors, who asked questions about sales and cashflow, but did not raise major objections as to how the company was run. In return, every week or so, Lim's teams introduced a.r.m. prosthetics to potential Asian clients or partners: new suppliers for small metal components, wealthy Brunei citizens in need of prosthetic limbs, and so on. Angela was even invited to make a presentation at a trade convention in Kuala Lumpur.

Lim's team also assisted a.r.m. prosthetics in registering their now numerous patents in Asia, especially in China. As the company grew, R&D was identifying new robotics solutions and applications for prosthetics. Lim's legal team was quick to point out the risks if those patents were not strongly protected against counterfeiting and intellectual property theft in all markets where they wished to operate.

About one year later, after a more thorough due diligence effort, and reassured by the company's growth prospects, Lim offered to increase his stake in a.r.m. prosthetics by injecting an additional 2.4-million dollars in exchange for a further 20% of equity (company valuation: 12 million dollars). Excited to get away from all cashflow issues, the founders happily agreed.

The accident

About 18 months after supplying this fresh capital to a.r.m. prosthetics, Mr. Lim, now aged 68, had a helicopter accident. He was flying his own aircraft to his countryside estate when it apparently suffered mechanical failure. He was able to crash land on a meadow but suffered head trauma as his head hit the dashboard. The injury left him paralyzed and struggling to articulate coherent thought and speech. The once brilliant businessman and industrialist was suddenly bedridden, and his wife quickly built at-home hospitalization capabilities in their Singapore penthouse apartment.

Consequently, as no family member was directly involved in the business (heirs may own shares but were having very different careers, most of them in America and in Australia), a guardian was named to conduct business operations in Lim's name. A Singaporean attorney was appointed by the Courts with the mission to protect Lim's assets and conduct business on his behalf and in his best interest.

a.r.m. prosthetics was not immediately informed of these events. Remote family members such as Han were also kept in the dark, as the family was advised to wait before communicating about Lim's health condition, mostly to protect the business from aggressive moves from competitors.

The guardian's initial analysis of Lim's business empire made him worry about a very high level of debt. He therefore started identifying risky investments, as well as participations in businesses that did not fit with the rest of his empire. a.r.m. prosthetics was one of these. His idea was to get rid of these investments to pump fresh cash into the heart of the conglomerate. This would enable a dividend distribution to all heirs of Lim's fortune, which would reassure them and keep them quiet.

The guardian is a seasoned lawyer from an important business law firm in Singapore, which belongs to a network of influential law, audit and consulting firms based all over Asia, from Korea to Indonesia, including Bangkok, Hong Kong, and mainland China.

He inserted in the network's electronic bulletin board information regarding all the investments for sale from Lim's portfolio. Soon enough, lawyers from China started asking questions and requesting contractual documents regarding a.r.m. prosthetics (company founding documents, list of patents, investor pact, etc.).

Closing the trap

Shortly thereafter, with a.r.m. prosthetics still unaware of what was happening in Singapore, the founders were contacted by an attorney from a local boutique law firm in their own home city, who stated that he represented companies interested in investing in a.r.m. prosthetics, without giving more detail. The meeting was set up as a lunch at an upscale local restaurant. Over good food and fancy wine, the conversation was very enjoyable, as the lawyer proved curious about the company, and the personal history of the partners. But in return, the attorney was less than forthcoming in details about his clients, simply stating they are based in Asia, and they are actors in markets where Mr. Lim also operates.

After that lunch, the owners were left curious as to what this was about. They contacted a.r.m. prosthetics' lawyers with many questions – and got few answers, mostly an explanation of what the investor pact permitted and forbade. They were told that no new investor could come in without permission from current partners; if someone were to sell their shares, then the remaining partners had the opportunity to preempt the sale.

The next call came from an international law firm, with offices on all five continents, requesting a meeting with the shareholders. This time, they were invited to the law firm's local offices in the business district of their nation's capital city and greeted in a formal conference room. Only now were they informed of Mr. Lim's medical situation – and that the guardian of Mr. Lim's estate had decided to activate the exit clause of the investor pact. According to the investor pact, the partners had two months to preempt the sale, before the investor was allowed to sell to a third party. In other words, to remain in control of their company, Angela, Roberto, and Mike had to find 6.25 million dollars to cover the price for 39% of the shares, based on a company valuation of 16 million dollars. 6.25 million dollars!

Left in shock, they tried to look for options. A few weeks later, they received a registered letter from Lim's guardian, stating that he had identified a buyer for Mr. Lim's shares – a Canadian company, with a Canadian CEO and a name reminiscent of a native tribe. But upon further enquiry, this "Canadian" firm appeared to be owned by a sole shareholder, a recently incorporated company named *Shoubi*, out of Shenzhen, China. *Shoubi* means "arm" in Mandarin. The company's CEO is also listed as CEO or major shareholder in companies mining diamonds, rare earth elements and lithium all over the world. Apparently, they had offered 8 million dollars for Mr. Lim's shares in a.r.m. prosthetics – a hard-to-beat offer.

Angela, Roberto and Mike will never meet their new "partner", as the sale of the shares will take place in Singapore and will be registered there. The international law firm will represent the new partner at Board meetings, based on documents fed to them – and a.r.m. prosthetics' legal counsel, when asked, says none of this contravenes anything in the corporation's governing documents or the partnership agreement. Thus, proof of ownership would pass first to the Canadian company, then to *Shoubi* directly, then the new partner would grant power of attorney and full representation to a partner in the local branch of the international law firm. Pressed by the original shareholders, this attorney appeared to have little to say and to be mostly a message carrier to and from the Board. As per the provisions of the investor pact, the attorney was given full computer access to a.r.m. prosthetics' systems.

Not long after, Han started noticing that the attorney's account was used to set up a back door to the company's computer system, and that a lot of data was accessed and transferred, including technical specifications for their products and prototypes. The data packets were bounced through various IP addresses around the world, and it was impossible to ascertain their destination. When confronted, the attorney first pled innocence, then conceded that the new shareholder had requested full access to the company's systems. He claimed to know nothing about data transfers.

Angela's phone started ringing. Some of her contacts in Asia, especially people she had met in Kuala Lumpur, started mentioning a new entrant on the market, out of China, promising to offer products looking suspiciously like a.r.m. prosthetics' products.

Angela, Roberto and Mike decided to confront their new shareholder. They requested the attorney to ask his client to come in person to the next Board meeting. Following his evasive response, they tried contacting *Shoubi* and its CEO directly, but only received promises that he would get back to them rapidly – which never materialized.

Only a few days later, their new shareholder sent an official request that the company be relocated in China and a new management team be appointed; if the company failed to do so, they threatened to cash out their investment. Angela, Roberto, and Mike considered this for what it seems to be: pure blackmail!

Angela, Roberto and Mike immediately asked their own lawyers what protective measures could be taken. The advised course of action was to file an action with the local courts to try and put a.r.m. prosthetics under protection, something that could be done rapidly – but potentially with little effect, considering their counterpart is based in a different country.

It soon became apparent that neither the company, nor its founders, could ever reimburse their mysterious shareholder. The attorney-representative of *Shoubi* therefore went to the local tribunal with a request that the company be liquidated, and that its assets be transferred to its main creditor. The equation was plain and simple: the foreign investor was using the local courts to receive full control of all company assets, both tangible (machines, prototypes, etc.) and intangible (data, patents, etc.), as payment for their exit from the company. The attorney claimed that the founders may steal their company's intellectual property, so they needed to be ordered to leave the premises, leave their computers behind and never return. The local court found in favor of this request. Soon after, Angela, Roberto and Mike were escorted out of their offices and passcodes were changed so that they could not return.

A few days later, all personnel were notified of their lay-off, with immediate effect.

This was the end of the road for a.r.m. prosthetics. All computers, patents, drawings and trademarks, together with all documentation and client files, were now in the hands of the liquidator, waiting to be transferred to some shady company and, one could only assume, heading to one of China's army's scientific labs.

A few weeks later, on his way to Prof. Mitchell's house, Roberto drove past their offices and found them locked and empty. Machines had been dismantled and loaded into containers. Over coffee with his favorite teacher, she mentioned that she was contacted, a few years back, by a company called Strider Technologies Inc[4]. They were doing research looking at how Western universities were collaborating, consciously or unconsciously,

[4] https://www.striderintel.com/

with Chinese military scientists[5] and, since her lab had come up in their dataset, she was asked for comment. While she acknowledged that she collaborated and coauthored papers with Chinese scientists, she did not know these people were linked with the Chinese People's Liberation Army and had never received any Governmental contact raising concerns or asking her to limit such collaborations. Upon learning about a.r.m. prosthetics' demise, she expressed her hope that these two events were unrelated.

[5] https://www.theglobeandmail.com/politics/article-chinese-military-scientists-canadian-universities/

Possible questions for discussion (non-exhaustive list)

1) What elements seem to indicate that this scenario is linked with hybrid warfare? What are the different, potential hybrid warfare techniques at play in this scenario?
2) How do you interpret the cyber incident mentioned half-way into the scenario? Should business C-suite members be more suspicious when such apparently benign events occur?
3) Draw a stakeholder map with all involved parties, i.e., a graphic representation of all actors, with arrows between them indicating support or opposition. List and prioritize the interests and values of the main stakeholders of the case.
4) Should Angela, Roberto and Mike have been more careful about their shareholder structures? How could they have done so?
5) From a business perspective, should States intervene to regulate and protect start-ups and other companies developing products or services with potential military applications? If so, how?
6) Are start-uppers typically sufficiently prepared to address the legal aspects of future business venture? Should you decide to become an entrepreneur, do you feel sufficiently prepared in Law?
7) The capitalist system in its 2010s version seemed to provide free flowing, widely available money to ingenious entrepreneurs. But by now, nefarious actors are known for using Western systems and institutions against Westerners. What are the different characteristics of Western capitalist systems that could be turned against Western Nations?
8) Numerous states develop mechanisms to accompany start-ups in their growth (incubators, services offered by the chamber of commerce, access to public funding, etc.). However, do they have the means to identify and protect innovators of products and/or services that could be of national interest (not limited to military or national security applications)?
9) Do you consider the hostile takeover of the company the fruit of a long-term plan or a purely opportunistic move?

Possible specific questions for lawyers and law students

1) From a legal perspective, should States intervene to regulate and protect start-ups and other companies developing products or services with potential military applications? If so, what legal instruments could be developed?
2) Imagine you are one of the founders' friends from college advising them in this scenario. You have taken a class on hybrid warfare in law school or have heard about it at a symposium. Would such prior knowledge of hybrid warfare have led you to advise them differently, maybe to direct them toward less risky financial decisions?
3) Analyze typical investor pacts used in your jurisdiction in terms of the risks of predatory behavior. Are they sufficiently protective against hybrid warfare moves? Should they be more protective? If so, at what cost (in terms of the other clauses of such contracts)?
4) "Start-up founders tend to overlook legal aspects of their business endeavor." What is your perspective, as a lawyer, on such a statement?
5) Did a.r.m. prosthetics' lawyers do their jobs appropriately? Was there anything they could have done to prevent the trap from functioning?
6) Local law firms have been used, in this scenario, to take control over a.r.m. prosthetics. What are the ethical implications of such actions? In practice, do they raise ethical concerns? Should they? Are there any ethics rules from your location of practice addressing such scenarios?
7) To close the trap, the nefarious actors are using the Western country's judiciary to pursue their own objectives. This is called "lawfare." Are your local jurisdictions well-equipped to protect citizens and companies against lawfare?