

Behind, and Beneath, the Blockchain/Bitcoin Buzz: An Initiative, and an Invitation
[02/26/18]

Few recent advances have been as widely reported, and yet as sparingly explained, as blockchain technology—a decentralized method of creating and disseminating cryptographically-secured electronic records, and of tracking virtual or physical items—and its use in Bitcoin and other forms of virtual, and (semi-)anonymous, cash.

The American University Washington College of Law (WCL) Blockchain & Cryptocurrencies Legal Issues Group will focus on fostering—and increasing students’ career opportunities through—a deeper practical understanding of these transformational/disruptive technologies and (see list below) their curriculum-spanning applications and implications.

Student-organized and -directed, but welcoming the participation of all members of the WCL and American University communities, the Group intends (though starting slowly) to help:

- Demystify—in an accessible, supportive, and inclusive environment—the fundamental technical principles, and sometimes-confusing terminology, of blockchain and cryptocurrency, and correct popular misconceptions surrounding these technologies;
- Investigate the range of, and relationships among, the emerging legal, regulatory, and cultural issues spawned by the proliferation of these practices;
- Explore the ways in which blockchain and cryptocurrency are migrating into the daily processes of many law firms and individual lawyers;
- Examine effective methods by which lawyers can not only teach themselves, but also educate colleagues and clients, about these rapidly-evolving areas;
- Develop, and curate an annotated list of, recommended digital and hard-copy resources;
- Host a speaker and discussion series featuring students, faculty, staff, practitioners (including WCL alumni), regulators, coders, entrepreneurs, and investors;
- Encourage participants’ preparation, publication, and promotion of written analyses (blog posts, opinion pieces, commentary, and articles of different lengths), and live or recorded presentations, that demonstrate a facility with these issues and enhance their professional portfolios;
- Identify related externship and/or employment opportunities with law firms, companies, agencies, public interest and advocacy groups, and other organizations; and
- Connect with, and support the creation of, counterpart groups at other law schools and universities.

WCL’s Blockchain & Cryptocurrencies Legal Issues Group invites your involvement. We will learn together. And we will have some fun doing it.

Professor Walter A. Effross (Faculty Advisor)
American University Washington College of Law
<http://www.effross.com> effross@wcl.american.edu

Andres Franco, 2L
af5714a@american.edu

Blockchain- and Cryptocurrency-Related Legal Issues: A Starter Set
Professor Walter A. Effross
American University Washington College of Law
[02/26/18]

The legal issues spawned by these technologies are not confined to the traditional subject(s) of any single course, but instead pervade, permeate, and percolate through the entire law school curriculum:

Civil Procedure/Conflicts of Law-

Which jurisdiction's laws apply to a transaction involving blockchain technology?

Contracts

How can "smart contracts" (computer programs designed to execute transactions automatically and autonomously) be designed and implemented using blockchain, and how does the current law of contracts govern the interpretation and enforceability of these arrangements? (In June 2017, Nevada amended its version of the Uniform Electronic Transactions Act to recognize blockchain as a method of forming enforceable contracts.)

How does/will the law of smart contracts reflect concerns about the regulation of artificial intelligence (AI) generally?

Intellectual Property

Who has intellectual property rights in the various "flavors" of blockchain software, and how can rights-owners license that technology? To what degree is the relevant code "open source"?

How can blockchain be applied to the licensing of other intellectual property, and to address the problem of "orphan works" (those still within the copyright period but whose authors cannot be located)?

Regulatory and Administrative Law

Which state, federal, and international agencies or authorities can, and should, regulate blockchain applications—especially cryptocurrencies? What should those regulations cover, and how can they be harmonized? (In June 2015, the New York State Department of Financial Services promulgated a "BitLicense" regulation for certain "Virtual Currency" transactions "involving New York or a New York Resident.")

Criminal Law

How can law enforcement authorities apprehend money-launderers, blackmailers (including the disseminators of "ransomware"), tax evaders, and others whose crimes are enabled, and identities shielded, by the use of cryptocurrency?

How can cryptocurrency coins be stolen? What, if any, recourse is available to victims of such thefts?

National Security

How can nations prevent cryptocurrency from being used to finance, launder money for, or transfer value anonymously for, terrorist organizations?

Privacy, and Data Security

What laws apply to the protection of personal information recorded in a blockchain record? How can such information be protected technologically?

Healthcare

How does the Health Insurance Portability and Accountability Act of 1996 (HIPAA) apply to personal health information stored in a blockchain system?

Securities

Do cryptocurrency “coins” made available in “initial coin offerings” (ICOs) qualify as securities governed by the SEC’s rules and regulations?

How does Article 8 of the Uniform Commercial Code apply to the issuance of uncertificated securities through blockchain?

Tax

How does the Internal Revenue Service treat payments in cryptocurrency, as opposed to in cash or other traditional forms of payment?

How is this issue complicated by the volatile valuations of cryptocurrency “coins”?

Business Associations, and Corporate Governance

What law governs “decentralized autonomous organizations” (DAOs), entities whose operations (including the execution of “smart contracts”) are governed by computer programs? What is the liability of these entities, and/or of the programmers of their code?

What is the responsibility of directors of traditional corporations to educate themselves about, and react to the emergence of, blockchain and cryptocurrency? How much would an understanding of such practices aid candidates for directorships?

How can blockchain be used to securely make information available to members of a board of directors, and to enhance the shareholder voting process? (In August 2017, Delaware amended its General Corporation Law to allow corporations to maintain shareholder lists and other records through blockchain.)

What are the implications of blockchain and cryptocurrency for corporate compliance departments? For “social enterprises”—such as benefit corporations—that are intended not only to make some profit but also to serve social purposes?

Corporate and Personal Bankruptcy

Do cryptocurrencies qualify as “commodities,” or instead as “currencies,” under the Bankruptcy Code?

Can the fluctuations in the value of cryptocurrencies ground fraudulent transfer actions to recover pre-bankruptcy payments made by the debtor, and/or motions by secured creditors for adequate protection of their interests in the debtor’s property?

Legal Ethics

Can a lawyer ethically accept cryptocurrency payments from her client, or from another party on the client’s behalf?

Can a lawyer hold cryptocurrency in escrow for clients?

Evidence

How can blockchain-based records be introduced and authenticated as evidence?

Property/Real Estate Law

How can blockchain be used to record the conveyance of, and mortgages on, real property?

Secured Transactions and Negotiable Instruments

How can blockchain be used to record security interests, and/or the transfer of negotiable instruments?

What are the special concerns of a creditor attempting to obtain a security interest in another party's cryptocurrency assets?