

The Ethics of Accepting Cryptocurrency as a Payment

How does payment in cryptocurrencies potentially implicate two ethical obligations for lawyers?

By Nika Gigashvili

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The role of cryptocurrencies in legal practice has expanded exponentially in the past few years. Simultaneously, cryptocurrencies have emerged as a popular and more reliable payment system throughout the world.

Cryptocurrency is a virtual currency that is traded online. It may be considered an electronic asset that can be purchased, sold, or otherwise transferred through the network. Because cryptocurrency is created via peer-to-peer computer networks, it is not backed by any government. For the reasons explored in this article, lawyers may face ethical questions about whether or not to accept cryptocurrency as a payment for the legal services they provide as cryptocurrency's technology and applications improve and become more widespread.

Payment in cryptocurrencies may primarily implicate two ethical obligations for lawyers. First, there is a prohibition against an agreement on unreasonable fees under ABA Model Rule 1.5. Second, cryptocurrency payments may also implicate the limitation on entering into a business transaction with a client under ABA Model Rule 1.8.

In the absence of concrete guidance, Nebraska was the first state to weigh in, primarily focusing on the requirements of the Nebraska equivalent of ABA Model Rule 1.5 to promulgate ethical rules in cryptocurrency transactions. Nebraska Lawyer's Advisory Comm., Ethics Advisory Op. for Lawyers No. 17-03. The opinion specifically advised lawyers to convert digital currency into U.S. dollars immediately upon receipt. According to the opinion, considering the volatility of cryptocurrency prices, prompt sale of the cryptocurrency will ensure that the

lawyer does not overcharge the client. However, the New York City Bar Association (NYCBA) went further and opined that lawyers must comply with ABA Model Rule 1.8(a) when they accept cryptocurrency as a payment. [NYCBA, Comm'n on Prof'l Ethics, Formal Op. 2019-5](#). ABA Model Rule 1.8(a) states that a lawyer shall not enter into a business transaction with a client or knowingly acquire an interest adverse to a client unless it is excepted under the rule. Specifically, the New York City Bar Association found that a lawyer must meet all the requirements of ABA Model Rule 1.8(a) when the terms of the agreement establish payment in cryptocurrency as the only payment method.

The Nebraska Lawyer's Advisory Committee's goal is to protect clients from unreasonable fees. However, the requirement to convert cryptocurrencies immediately upon payment is ineffective to reach the result. The Nebraska opinion fails to account for the fact that the client incurs cost upon payment, and the change in the cryptocurrency price would not affect the client's cost basis on the transactions already performed. The client's cost is also independent of the lawyer's timing of conversion. For example, assume that a contract provides for the payment of 1 BIT (bitcoin) on January 1, 2020, and the price on January 1, 2020, is \$200 per bitcoin. Once the client transfers 1 BIT from his wallet to the lawyer's wallet, he incurs a cost in the amount of \$200. If the lawyer converts 1 BIT into U.S. dollars a week later when the price has increased to \$300, the lawyer receives \$300, but the client's cost does not change. The client's cost on January 1, 2020, is also unaffected by the lawyer's decision to retain bitcoin indefinitely.

Similarly, the requirement to convert immediately upon payment fails to protect the client even in the case of monthly fee payments. The Nebraska Lawyer's Advisory Committee's caution toward cryptocurrency is mostly based on the volatility of its price. In multi-payment fee contracts, if the price of 1 BIT changes every month, the client would indeed pay different amounts of dollars for the same service. But the lawyer's obligation to convert bitcoin into dollars would not affect the client's cost. Therefore, the rule promulgated by the Nebraska Lawyer's Advisory Committee would not prevent the lawyer from overcharging the client.

In a way, the New York City Bar's opinion resolves the aforementioned issue, by focusing on the lawyer's prepayment obligation instead of the post-payment period. However, the New York City Bar erroneously qualified

the payment in cryptocurrency as a business transaction because cryptocurrencies do not resemble the complex stocks, security interests, or similar complex transactions.

ABA Model Rule 1.8(a) applies to multifaceted transactions between a lawyer and a client. Usually, such transactions involve stocks, security interest in the client's property, mortgage, and goods. NYCBA Formal Op. 2003-03 (2000); NYCBA Formal Op. 88-7 (1988); *Murstein v. Caporella*, 619 F. App'x 832 (11th Cir. 2015); N.Y. State Bar Ass'n, Comm. on Prof'l Ethics, Ethics Op. 1156 (2018); ABA Model Rule 1.8 cmt. 1. These transactions are more closely scrutinized because they implicate issues outside a mere transfer of ownership between the lawyer and the client. The rationale is that each of these modes of payment creates a separate set of rights that requires the application of complex rules and knowledge. Thus, a lawyer, having specialized knowledge, may easily gain an advantage in negotiating fee arrangements. However, transactions involving cryptocurrency do not create such complex issues. The only issue is the exchange rate and, therefore, the timing of payment. The lawyer does not possess superior knowledge to control or to predict the price fluctuation, nor is the lawyer in a better position to negotiate a favorable exchange rate. The New York City Bar's main argument is that exchange rates involve complex issues that are beyond the grasp of an average client. But it is generally not the case. For instance, the transaction fee—which the New York City Bar considers to be a part of the complexity—is a very simple and automatic process in bitcoin transactions.

Consequently, the best solution is to make ABA Model Rule 1.5 applicable to all cryptocurrency payments. In his *Statement on Cryptocurrencies and Initial Coin Offerings* (2017), Securities and Exchange Commission (SEC) Chairman Jay Clayton noted that cryptocurrencies are not securities. While the Internal Revenue Service (IRS) treats virtual currencies as “goods,” the courts have qualified cryptocurrencies as “money” or, at least, as a medium of exchange. IRS Bull. 2014-16; *United States v. Petix*, No. 15-CR-227A (W.D.N.Y. 2016); *United States v. Faiella*, 39 F. Supp. 3d 544, 545 (S.D.N.Y. 2014); *SEC v. Shavers*, 2013 WL 4028182, at *2 (E.D. Tex. Aug. 6, 2013). Similarly, a payment in cryptocurrency should be treated as a payment in money under ABA Model Rule 1.5. To match cryptocurrencies with the qualities of true currency even further, attorneys and clients may also establish limits on the price to account for some degree of price volatility and protect each party's interest.

By following ABA Model Rule 1.5 and taking these steps, an agreement to pay the legal fee in cryptocurrency will be subject to the reasonableness test noted under comment 3. This approach will balance interest and flexibility for lawyers and clients to exchange payment through cryptocurrency. In addition, it will better protect clients from the volatility of cryptocurrency prices. Even when the agreement provides for the payment of a fixed amount of cryptocurrency, reasonableness would require a price adjustment in the case of extreme changes because legal fees must be reasonable not only at the time of the conclusion of the contract but in operation too. *Clark v. GM, LLC*, 161 F. Supp. 3d 752, 760 (W.D. Mo. 2015); *Greenbelt Homes, Inc. v. Nyman Realty, Inc.*, 48 Md.App. 42, 49 (1981). In long-term contracts, lawyers would be required to allow price adjustment in case the exchange rate exceeds a certain limit. But when a contract fails to protect the client in this manner, the courts will have the power to assess the reasonableness of legal fees paid in cryptocurrencies without qualifying the payment as a business transaction.

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Crypto-Focused Law Firm Founders Battle Over Digital Assets

By Brian Baxter and Chris Opfer

- Roche Cyrulnik Freedman in two-state battle with co-founder
- Jason Cyrulnik claims that \$250 million crypto haul ousted him

The growing acceptance of cryptocurrency—and its skyrocketing value—are fueling a legal fight among founders of a boutique law firm in New York and Miami.

Jason Cyrulnik, a former equity partner at Boies Schiller Flexner, in January 2020 was one of 15 lawyers to start the law firm, Roche Cyrulnik Freedman, which accepted cryptocurrency as a payment for its services.

More than a year later, Cyrulnik is battling the firm's other two co-founders in court, alleging they are trying to seize his \$60 million share of a cryptocurrency asset—a bounty whose value he claims in court papers has recently spiked to \$250 million.

"I have never seen a more egregious scheme," Cyrulnik's lawyer, Marc Kasowitz, said in a statement. Kasowitz declined to discuss the identity of the cryptocurrency asset.

The drama shows the unintended downstream consequences firms can face when they embrace the growing popularity of digital currencies. The District of Columbia Bar recently joined bars in New York City and North Carolina that approved bitcoin and other cryptocurrency payments in return for legal services.

"Lawyers are permitted to take all kinds of things for payments, even if the value of those things changes over time," said Noah Fiedler, who represents attorneys accused of ethics violations in addition to serving as partner-in-charge of Hinshaw & Culbertson's Milwaukee office.

In a complaint filed Tuesday in a state court in Miami, Cyrulnik claims his now former partners voted to eject him from Roche Cyrulnik Freedman last month in an illegal scheme to strip him of the firm's newfound largesse.

The firm, which has renamed itself Roche Freedman, claims it ejected Cyrulnik after he was abusive to colleagues and violated the terms of a memorandum of understanding dividing its profits.

Roche Freedman filed a lawsuit Feb. 27 against Cyrulnik in New York after he refused to leave the firm. A pretrial conference in the case is set for June 9.

Name partners Kyle Roche and Velvel "Devin" Freedman didn't respond to requests for comment about the fallout involving their former partner.

Fiedler, the ethics expert, said paying an attorney in cryptocurrency is similar to paying a lawyer in company stock.

"The problem with crypto is that it's so volatile," he said. "Who reaps the rewards when the value skyrockets and who takes the risk when it nosedives?"

Those situations, he noted, are generally treated as business transactions between the lawyer and the client, instead of the usual payment of fees. They are subject to several additional safeguards to prevent conflicts of interest, he said.

Building a Business

Roche Cyrulnik Freedman, at the time of its founding a year ago, said it would focus on high-stakes litigation in emerging areas like cryptocurrencies and cannabis.

The firm is representing the estate of bitcoin developer David Kleiman in a lawsuit against alleged bitcoin creator Craig Wright.

Roche Freedman is also co-lead counsel in a class action case against iFinex Inc., owner of the cryptocurrency exchange Bitfinex and its associated stablecoin Tether. Bitfinex paid \$18.5 million in February to settle a probe by New York State Attorney General Letitia James.

Cyrulnik claims in court filings that his \$7.5 million book of business accounted for more than 60% of the firm's gross revenue last year and kept it afloat while a cryptocurrency payment from its unidentified startup client appreciated in value.

While most tokens don't usually generate such returns, over two weeks earlier this year the size of Roche Cyrulnik Freedman's stake quintupled to \$250 million, according to court filings by Cyrulnik.

"What these lawyers have done is flatly contrary to the parties' binding agreement, their ethical and fiduciary duties and, governing Florida law," Kasowitz said.

Kasowitz's high-powered firm, Kasowitz Benson Torres, is where Cyrulnik's brother, Kevin, is a commercial litigation partner and structured finance specialist, said a source familiar with the matter.

Kasowitz declined to discuss how his firm came to represent Cyrulnik, who didn't respond to a request for comment.

Earlier this year, Cyrulnik's now former firm brought on a new partner in Eric Rosen, a former lead federal prosecutor in a wide-ranging college admissions investigation that cost a former Big Law practice leader his job. Rosen is listed as co-counsel to Roche Freedman in the New York complaint it filed against Cyrulnik.

Sean Hecker, a former Debevoise & Plimpton partner who in mid-2018 linked up with litigator Roberta Kaplan to form New York's Kaplan, Hecker & Fink, is also representing Roche Freedman in the dispute. Hecker, who didn't respond to a request for comment, has his own cryptocurrency industry ties.

In February, Hecker represented Stefan He Qin, the 24-year-old founder of two cryptocurrency-focused hedge funds, as he pleaded guilty to duping investors out of \$100 million. Hecker's also advising one of the founders of cryptocurrency derivatives exchange BitMEX in a federal money laundering case.

Bitcoin and other virtual currencies and related assets have surged in value this year.

Coinbase Inc., the largest U.S. cryptocurrency exchange, filed plans to go public last month and disclosed an \$18 million windfall for its top in-house lawyer. Payward Inc., another cryptocurrency exchange doing business as Kraken, could ride the bitcoin boom to a \$10 billion valuation, according to Bloomberg News.

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Blockchain 2022 Legislation

Updated June 07, 2022 | Heather Morton

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Blockchain is a distributed ledger technology that records and shares every transaction that occurs in the network of users.

One example of how blockchain works is in a sales transaction using distributed ledger technology and a digital currency as payment in the transaction. In this example, the buyer initiates the purchase, known as the block, which contains transaction data such as the date, time and payment amount. Both the buyer and seller can see the block of transaction data, so both parties can confirm the payment was sent and received. Each transaction's block is created in a shared online accounting ledger that can involve multiple buyers and sellers within a network. As new transactions occur between the buyer and seller, each data block is recorded and forms the chain that documents the transaction history.

Blockchains can be permissionless, also called public, which are typically open for anyone to view and participate. Or, blockchains can be permissioned, which limit the participation to a single administrator or a specific group of participants.

Digital currencies are only one way to use blockchain. Other evolving applications can include online voting, medical records, insurance policies, property and real estate records, copyrights and licenses and supply chain tracking. They can also include smart contracts, where payouts between the contracted parties are embedded in the blockchain and automatically execute when contractual conditions have been met.

Twenty-eight states addressed legislation regarding blockchain, smart contracts and verifiable credentials.

Blockchain 2022 Legislation

State	Bill Number	Bill Summary
Alabama	None	
Alaska	None	
Arizona	SB 1156	Prohibits a city, town or county from imposing a tax or fee on the use of blockchain technology by any person or entity.
Arkansas	None	
California	AB 2781 Passed Assembly 5/26/22	Existing law creates the Office of Digital Innovation within the Government Operations Agency and establishes the office's mission of delivering better government services to the people of California through technology and design, including by collaborating with state entities to transform

State	Bill Number	Bill Summary
		government services. This bill requires the office to study the feasibility and appropriateness of utilizing blockchain technology, as defined, by the Employment Development Department for the purposes of identity verification and fraud prevention, subject to the availability of funding for these purposes. The bill requires the office, on or before Jan. 1, 2024, to report to the Legislature on the findings of this study, as specified, and repeals these provisions on Jan. 1, 2026.
California	SB 112 Returned to secretary of Senate pursuant to Joint Rule 56 2/3/22	Makes appropriations for the support of state government for the 2021-22 fiscal year. Requires the Department of Technology to consider the use of various technologies that support privacy protections, including blockchain technology or single digital identifiers, when planning and developing the Digital Identification pilot program.
California	SB 689 Returned to secretary of Senate pursuant to Joint Rule 56 2/1/22	Existing law requires the state registrar, local registrar, or county recorder, upon request and payment of the required fee, to supply to an applicant a certified copy of the record of a birth, fetal death, death, marriage, or marriage dissolution registered with the official. Existing law requires the certificate to contain certain information and to be printed on chemically sensitized security paper, as specified. This bill authorizes a certified copy of a birth, death, or marriage record issued pursuant to those provisions to be issued, in addition to the required method described above, by means of blockchain technology, as defined. Existing law requires the secretary of the Government Operations Agency to appoint a blockchain working group and requires that group to submit a report containing specified information related to blockchain technology to the Legislature on or before July 1, 2020. This bill revises and recasts the definition of blockchain for purposes of those provisions.
California	SB 1190	On or before Jan. 1, 2024, this bill requires the Department of Technology to create a California Trust Framework to provide industry standards and best practices regarding the issuance of credentials to verify information about a person or a legal entity. The bill would require the California Trust Framework to be designed, to the greatest extent possible, to be interoperable with other government trust and governance frameworks for verifiable credentials.
Colorado	HB 1053 Sent to governor 5/31/22	Instructs the commissioner of Agriculture (commissioner) to create and deploy an online program that educates agricultural producers about blockchain technology. The commissioner will consult and cooperate with stakeholders to develop the online program, publicize the program, and encourage agricultural producers to participate in the program.

State	Bill Number	Bill Summary
Colorado	SB 25 Sent to governor 5/17/22	Concerns state capital financing managed by the state treasurer; expands the types of collateral that can be used to secure such financing and, if deemed feasible and in the best interest of the state by the state treasurer after a required study is completed, authorizes the use of security token offerings for such financing, and makes an appropriation.
Connecticut	None	
Delaware	None	
District of Columbia	None	
Florida	None	
Georgia	None	
Guam	None	
Hawaii	HCR 165 HR 165	Requests the office of enterprise technology services to develop a recommended definition for blockchain technology and recommendations for opportunities for individuals, private entities, and state agencies to use blockchain technology.
Hawaii	SB 2695 Sent to governor 5/6/22	Establishes a Blockchain and Cryptocurrency Task Force.
Hawaii	SCR 31 SR 26	Requests the department of commerce and consumer affairs to create a task force to study the approval of blockchain technology and cryptocurrency in the state.
Idaho	HB 465	Relates to digital assets; amends title 28, Idaho Code, by the addition of a new chapter 53, title 28, Idaho Code, to provide a short title, provide scope, to define terms, to provide for classification of digital assets, to provide for purchase and sale of digital assets, and provide for perfection by possession or control.
Idaho	HB 583 Signed by governor	Adds to existing law to provide for classification of digital assets; provides for purchase and sale of digital assets; provides for perfection by possession or control of digital assets.

State	Bill Number	Bill Summary
	3/28/22, Chapter 284	
Illinois	HB 5427	<p>Amends the Blockchain Technology Act. Sets forth provisions concerning the purpose and findings of the Blockchain Technology Act. Provides that a court shall permit discovery of electronic records if the existence or ownership of a digital asset secured by a blockchain is factually in dispute. Sets forth provisions concerning permissible discovery of facts and information concerning digital assets and discovery procedures for digital assets. Provides that a court may order that the party with ownership or control over an account generate a test transaction in an amount not to exceed \$1 to prove ownership or control over the account. Provides that a party holding a digital asset where the nature and type of the digital asset is at issue in the case may shield the need for disclosure if it posts security with the court for a comparable value for the digital asset in question if the value of the digital asset can be assessed, or for a value that is reasonably correlated to the estimated value of any judgment. Provides that a party seeking to validate or challenge the nature, accuracy, or propriety of a vote taken in connection with a decentralized autonomous organization shall be allowed discovery sufficient to describe the nature and type of vote or votes being taken. Provides that the provisions are repealed 5 years after the effective date of the amendatory Act. Creates the Digital Asset Discovery Task Force to conduct a review of the court-ordered discovery of digital asset procedures. Sets forth provisions concerning the Task Force's members, administrative support, and compensation. Provides that the Task Force shall submit a report containing its findings and any recommendations to the Supreme Court and the General Assembly by Jan. 1, 2023. Provides that the Task Force is dissolved on Jan. 1, 2024.</p>
Illinois	SB 3435	<p>Amends the Corporate Fiduciary Act to create the Special Purpose Trust Company Authority and Organization Article. Provides that a corporation that has been or shall be incorporated under the general corporation laws of the state for the special purpose of providing fiduciary custodial services or providing other like or related services as specified by rule may be appointed to act as a fiduciary with respect to such services and shall be designated a special purpose trust company. Provides that it shall not be lawful for any person to engage in the activity of a special purpose trust company without first filing an application for and procuring a certificate of authority from the secretary of Financial and Professional Regulation. Provides that the Department shall adopt rules for the administration of the Article, and that specified Articles of the Corporate Fiduciary Act shall apply to a special purpose trust company as if the special purpose trust company were a trust company. Amends the Illinois Banking Act. In provisions concerning conversion and merger with trust companies, provides that a special purpose trust company may merge with a state</p>

State	Bill Number	Bill Summary
		bank or convert to a state bank as if the special purpose trust company were a trust company. Defines "special purpose trust company". Amends the Blockchain Business Development Act to provide that the Department of Financial and Professional Regulation shall have authority to adopt rules, opinions, or interpretive letters regarding the provision of custodial services for digital assets.
Indiana	HB 1211 Vetoed by governor 3/15/22	Provides that not later than Oct. 1, 2022, the department of administration (department), on behalf of the office of technology (office), shall issue a request for information for purposes of exploring how blockchain technology could be used by a state agency to: (1) achieve greater cost efficiency and cost effectiveness; and (2) improve consumer convenience, experience, data security, and data privacy. Requires the office to compile a report concerning the request for information and submit the report to the legislative council in an electronic format not later than March 31, 2023. Defines "blockchain technology" and "distributed ledger technology". Requires an agency to submit an emergency rule to the attorney general for review and approval before the emergency rule may take effect. Provides that emergency rules may not be effective for a period that exceeds 180 days. Provides that certain emergency rules expire not more than two years after the rule takes effect. Requires an agency adopting an administrative rule to submit an economic impact statement and an explanation of any penalty, fine, or other similar negative impact included in the proposed rule to the publisher of the Indiana Administrative Code (publisher). Requires the publisher to provide a copy of the materials concerning a proposed rule or pending readoption to the members of the appropriate standing committee, the governor, and the office of management and budget. Provides that administrative rules expire on July 1 of the fourth year after the year in which the rule takes effect (instead of Jan. 1 of the seventh year after the year in which the rule takes effect). Requires an agency intending to readopt an administrative rule to provide to the publisher, not later than Jan. 1 of the third year after the year in which the rule most recently took effect: (1) notice of; and (2) information concerning; the pending readoption. Requires that all broadband infrastructure projects that are funded in whole or in part by a grant or loan from the regional economic acceleration and development initiative (READI) fund must satisfy the criteria and requirements as described in the rural broadband program. Makes corresponding changes.
Iowa	HF 2302 Passed House 2/3/22	Relates to affirmative defenses for entities using cybersecurity programs. Provides rights of ownership of information within distributed ledger technology.

State	Bill Number	Bill Summary
Iowa	HF 2443 Sent to governor 6/1/22	Relates to contract enforceability regarding smart contracts and distributed ledger technology.
Iowa	SF 2049	Relates to affirmative defenses for entities using cybersecurity programs and electronic transactions recorded by blockchain technology.
Kansas	None	
Kentucky	HB 387	Amends KRS 139.516 to define "computing system node" and exempts it from sales and use tax; applies to transactions occurring on or after July 1, 2021.
Kentucky	HB 724	Establishes subtitle 53 of KRS chapter 304 to establish definitions, purpose, and interpretation of Insurance and Related Innovation Sandbox Law; establishes director of innovation within the Department of Insurance; establishes duties of the director of innovation; establishes procedures, parameters, and application process for obtaining a waiver or no-action letter with respect to specified requirements imposed by statute or regulation for insurance-related innovations; establishes procedures and parameters for obtaining an innovative insurer license; establishes procedures and parameters for reviewing and accepting or rejecting applications, the testing phase of an innovation, and the issuance of extended no-action letters; provides for the confidentiality of certain documents, materials, or other information created, produced, obtained, or disclosed in relation to the subtitle; establishes the Kentucky Innovation Council; requires the commissioner of insurance and other applicable agencies to adopt uniform procedures, by administrative regulation or cooperation agreement, for the administration of the subtitle; requires the commissioner of insurance and other applicable agencies to enter into any interstate innovation compact or memorandum of understanding and cooperation agreement necessary to carry out the purposes of the subtitle; establishes procedures and parameters for any interstate innovation compact or memorandum of understanding and cooperation agreement; authorizes information sharing with the insurance supervisory official of any state, province, or country; requires the commissioner of insurance and any applicable agency to report to the Interim Joint Committee on Banking and Insurance; amends KRS 304.10-030 and 304.10-040 to permit surplus lines insurance to be procured from a domestic surplus lines insurer; amends KRS 304.2-120 to permit licensees to make electronic notices; requires notices and orders of the commissioner of insurance be served electronically; amends KRS 304.1-120 and 304.11-030 to conform; amends KRS 91A.080 to exempt sandbox participants and innovative

State	Bill Number	Bill Summary
		insurers from local government premium tax; amends KRS 154.32-010 to add or modify definitions related to insurance innovators; amends KRS 154.32-020 to allow an insurance innovator to qualify for an economic development project and to include within the allowable incentives the insurance premiums taxes paid to the Commonwealth; makes conforming changes and require reporting to the Interim Joint Committee on Appropriations and Revenue; amends KRS 154.32-070 to conform; creates new sections of KRS Chapter 136 to allow the insurance innovator tax credit and to order the various tax credits allowable; amends KRS 131.190 to allow reporting on the tax credit data; repeals KRS 304.3-700 to 304.3-735, relating to insurance regulatory sandbox laws; provides that §1 to §15 of Act may be cited as the Insurance and Related Innovation Sandbox Law.
Kentucky	SB 16	Creates a new Subtitle 12 of KRS Chapter 286 to establish special purpose depository institutions that engage in a nonlending banking business; establishes findings and purposes for subtitle; provides for the organization, powers, and chartering of the institution; requires directors to take oaths; establishes capital, bonding, contingency, and insurance requirements; establishes requirements for offering depository accounts and other services; provides that certain provisions of Subtitle 3 of KRS Chapter 286 shall apply to the institutions; establishes branching requirements for in-state and out-of-state institutions; provides for administrative appeals; requires the commissioner of financial institutions to adopt administrative regulations to implement the subtitle; establishes administrative penalties and procedures for violations of the subtitle; establishes when the commissioner shall close an institution for liquidation; establishes procedures for voluntary dissolution; amends KRS 286.1-011 and 286.2-685 to conform; amends KRS 286.2-040 to allow the commissioner to examine special purpose depository institution service providers; requires the commissioner to promulgate administrative regulations to implement the Act on or before Oct. 1, 2022.
Kentucky	SB 17	Establishes KRS Chapter 355A and creates new sections thereof to define and establish property classifications for digital assets; supplements and modifies provisions of the Uniform Commercial Code, KRS Chapter 355, relating to the classification, perfection, and priority of digital assets; allows debtors located in Kentucky to file a financial statement with the secretary of state to perfect a security interest in a digital asset; establishes when a transferee takes a digital asset free of any security interest perfected by filing; for purposes of Article 9 of KRS Chapter 355, establishes when digital assets are located in Kentucky; classifies open blockchain tokens with certain characteristics as intangible personal property; requires developers and sellers of certain open blockchain tokens to file a notice of intent with the secretary of state, and pay a filing fee, prior to sale in this state; requires the secretary of state to promulgate forms and make the forms

State	Bill Number	Bill Summary
		accessible to filers; requires facilitators of certain open blockchain tokens in the resale market to comply with certain requirements; establishes penalties for violation of the section; provides that the secretary of state may make referrals to law enforcement agencies; provides that section may be cited as the Kentucky Utility Token Act; creates a new section of Subtitle 2 of KRS Chapter 286 to permit certain Kentucky financial institutions to elect to provide custodial services of customer currency and digital assets in accordance with the provisions of the section; establishes internal control and customer contracting requirements for providing custodial services under the section; provides that digital assets held in custody under the section are not depository liabilities or assets of the financial institution; requires the commissioner of financial institutions to establish a supervision fee; creates a new section of Article 1 of KRS Chapter 355 to conform; amends KRS 369.103 to include transactions involving digital assets; provides that the secretary of state and the commissioner of financial institutions shall promulgate administrative regulations to implement the Act on or before Oct. 1, 2022.
Louisiana	HB 170	Allows a candidate to receive campaign contributions in the form of cryptocurrency.
Louisiana	HB 804	Provides relative to blockchain tokens.
Maine	None	
Maryland	None	
Massachusetts	HB 103	Establishes a commission to investigate blockchain technology, so-called, applications and systems for possible beneficial use to the commonwealth including, but not limited to, the conduct of elections.
Massachusetts	HB 126	Establishes a special commission (including members of the General Court) on blockchain and cryptocurrency.
Massachusetts	HB 4513	Establishes a special commission on blockchain and cryptocurrency.
Massachusetts	SB 440	Allows electronic and blockchain signatures on nomination papers.
Michigan	SB 888	Establishes the blockchain and cryptocurrency commission.
Minnesota	HF 2730	Allows certificate tokens to be issued in place of shares of stock; amends Minnesota Statutes 2020, §302A.011, by adding subdivisions; §302A.111, subdivision 4; §302A.401, by adding a subdivision.

State	Bill Number	Bill Summary
Minnesota	HF 2835 SF 2940	Allows for the use of electronic networks and databases to record stock ownership and other records; amending Minnesota Statutes 2020, §302A.011, subdivision 60; §302A.015, subdivision 1; §302A.461, subdivision 6.
Mississippi	HB 1153 Died in committee 2/1/22	Authorizes security interests in digital assets; defines certain terms relating to digital assets; classifies digital assets as property; authorizes banks to provide custodial services for digital asset property; brings forward §§75-71-102, 75-71-103, 75-71-104, 75-71-105, 75-71-201, 75-71-202, 75-71-203, 75-71-204, 75-71-301, 75-71-302, 75-71-303, 75-71-304, 75-71-305, 75-71-306, 75-71-307, 75-71-310, 75-71-401, 75-71-402, 75-71-403, 75-71-404, 75-71-405, 75-71-406, 75-71-407, 75-71-408, 75-71-409, 75-71-410, 75-71-411, 75-71-412, 75-71-413, 75-71-501, 75-71-502, 75-71-503, 75-71-504, 75-71-505, 75-71-506, 75-71-507, 75-71-508, 75-71-509, 75-71-510, 75-71-601, 75-71-602, 75-71-603, 75-71-604, 75-71-605, 75-71-606, 75-71-607, 75-71-608, 75-71-609, 75-71-610, 75-71-611, 75-71-612, 75-71-613, 75-71-701, 75-15-3, 75-15-5, 75-15-7, 75-15-9, 75-15-11, 75-15-12, 75-15-13, 75-15-15, 75-15-17, 75-15-19, 75-15-21, 75-15-23, 75-15-25, 75-15-27, 75-15-29, 75-15-31, 75-15-32, 75-15-33 and 75-15-35, which relate to the Mississippi securities act and the Mississippi money transmitters act; for purposes of possible amendment; and for related purposes.
Mississippi	SB 2632 Died in committee 2/1/22	Creates a digital asset act; classifies digital assets; specifies that digital assets are property within the uniform commercial code; authorizes security interests in digital assets; establishes an opt-in framework for banks to provide custodial services for digital asset property as custodians; specifies standards and procedures for custodial services under this act; clarifies the jurisdiction of Mississippi courts relating to digital assets; authorizes a supervision fee; amends §81-5-33 concerning powers of banks in regard to trusts to conform; and for related purposes.
Mississippi	SB 2633 Died in committee 2/1/22	Creates the new §75-71-206 to create an exemption for open blockchain tokens from securities laws; amends §75-71-102 to revise definitions under the Mississippi securities act of 2010 to conform; amends §75-15-7 to revise exemptions under the Mississippi money transmitters act to conform; amends §75-15-32 to clarify the authority of the commissioner to investigate suspected violations of the Mississippi money transmitters act even if a blockchain token exemption is asserted; and for related purposes.
Missouri	None	
Montana	No regular 2022	

State	Bill Number	Bill Summary
	legislative session	
Nebraska	LB 761	Adopts the Precision Agriculture Infrastructure Grant Act. Includes blockchain within on-farm traceability solutions that satisfy food supply stakeholder demand.
Nevada	No regular 2022 legislative session	
New Hampshire	HB 1502	This bill specifies that digital assets are property within the Uniform Commercial Code; authorizes security interests in digital assets, allows banks to provide custodial services for digital asset property and provides procedures for the provision of custodial services.
New Hampshire	HB 1503 Passed both chambers 5/26/22	Exempts the developer, seller, or facilitator of the exchange of an open blockchain token from certain securities laws; adopts the Uniform Commercial Code on controllable electronic records; establishes the requirement, as well as waiver and fraud processes, for the use of American made steel products in all public works projects where the state administers the contract and the contract involves at least specified amount of state dollars.
New Jersey	AB 1975 SB 1267	Creates the Virtual Currency and Blockchain Regulation Act.
New Jersey	AB 2371 SB 1756	Creates the Digital Asset and Blockchain Technology Act.
New Jersey	AB 3288	Establishes Blockchain Promotion and Integration Program.
New Mexico	None	
New York	AB 3099 SB 5643	Establishes the office of financial resilience to develop and implement new programs and initiatives for the purpose of supporting local economies and promoting resilient financial models.
New York	AB 3587	Establishes the test, trust, and certify act to establish a protocol for COVID-19 testing, contact tracing, and immunity certification and to protect individuals' right to privacy; grants individuals the right to control their self-sovereign identification data; provides for the anonymization of biometric

State	Bill Number	Bill Summary
		data for protection from law enforcement. "Tracking" or "contact tracing" shall mean the protocol through which the infectious spread of the novel SARS-CoV-2 coronavirus and corresponding propagation of COVID-19 is monitored in individuals. Such protocol may be implemented through, but not limited to, the use of smart phone applications, an anonymized or pseudonymous digital tracing identifier, and blockchain, GPS, or Bluetooth technology.
New York	AB 3760	Relates to allowing signatures, records and contracts secured through blockchain technology to be considered in an electronic form and to be an electronic record and signature; allows smart contracts to exist in commerce.
New York	AB 3813 SB 1800	Relates to the development and creation of distributed ledger technology, which is a mathematically secured, chronological, and decentralized consensus ledger or database, whether maintained via internet interaction, peer-to-peer network, or otherwise used to authenticate, record, share and synchronize transactions in their respective electronic ledgers or databases, and business entities that develop distributed ledger technology.
New York	AB 3862 SB 4195	Relates to establishing a task force to study and report on the potential implementation of blockchain technology in state record keeping, information storage, and service delivery.
New York	AB 4332	Directs the state board of elections to study and evaluate the use of blockchain technology to protect voter records and election results.
New York	AB 7389 Passed both chambers 6/2/22 SB 6486 Substituted 6/2/22	Establishes a moratorium on the operation of cryptocurrency mining centers; provides that operation of a cryptocurrency mining center shall only be authorized following completion of a full generic environmental impact statement review and a finding that such center will not adversely affect the state greenhouse gas emission targets in the climate leadership and community protection act of 2019; provides for the repeal of such provisions upon expiration thereof.
New York	AB 9275 Passed both chambers 6/3/22 SB 8343 Passed Senate 6/2/22	Establishes the New York state cryptocurrency and blockchain study task force to provide the governor and the legislature with information on the effects of the widespread use of cryptocurrencies and other forms of digital currencies and their ancillary systems, including but not limited to blockchain technology, in the state.

State	Bill Number	Bill Summary
New York	SB 1801 Passed Senate 2/14/22	Allows signatures, records and contracts secured through blockchain technology to be considered in an electronic form and to be an electronic record and signature; allows smart contracts to exist in commerce.
New York	SB 5044	Creates the digital currency task force to provide the governor and the legislature with information on the potential effects of the widespread implementation of digital currencies on financial markets in the state.
New York	SB 8838	Requires certain disclosures in advertisements involving virtual tokens.
New York	SB 9275 Enacting clause stricken 5/25/22	Requires certain disclosures by a developer of virtual tokens in advertisements involving such virtual tokens.
North Carolina	None	
North Dakota	No regular 2022 legislative session	
N. Mariana Islands	Not available	
Ohio	HB 296	Modifies the law governing voter registration and the method of conducting elections. Requires the secretary of state to establish a pilot program to permit a uniformed services voter who is currently stationed outside the United States to return a voted ballot to the board of elections by electronic means using blockchain and for the board to create a paper version of the voted ballot for counting purposes.
Ohio	HB 387	Makes changes to the Election Law. Requires that on and after Jan. 1, 2023, all electronic equipment shall utilize blockchain technology, in addition to paper ballots and independent of any internet connection, to create an unalterable electronic record of votes cast, which shall employ software whose object codes and source codes are available for public inspection, but not for copying or reuse.
Ohio	HB 585	Amends §§1101.01, 1309.201, 1315.02, and 5726.01 and enacts §§1120.01, 1120.02, 1120.03, 1120.04, 1120.05, 1120.06, 1120.07, 1120.08, 1120.09

State	Bill Number	Bill Summary
		1120.10, 1120.11, 1120.14, 1120.15, 1120.16, 1120.17, 1120.171, 1120.18, 1120.19, 1120.20, 1120.21, 1120.22, 1120.23, 1120.24, 1120.25, 1120.26, 1308.62, 1309.801, 1314.01, 1314.02, 1314.03, 1314.04, 1706.90, 1706.901, 1706.902, 1706.903, 1706.904, 1706.905, 1706.906, 1706.907, 1706.908, 1706.909, 1706.9010, 1706.9011, and 1706.9012 of the Revised Code to create a special purpose depository institution charter, to provide for the formation and management of decentralized autonomous organization LLCs, to amend the Uniform Commercial Code to address the classification of and perfection of security interests in digital assets, and to allow banks to provide custodial services of digital assets.
Oklahoma	HB 3279 Passed House 3/15/22	Relates to technology; creates the Oklahoma Distributed Ledger Technology Assets Offering Act; provides legislative findings; requires act be used to regulate medical marijuana; defines terms; authorizes state to develop and use distributed ledger technologies; requires certain software; requires certain security and legal requirements; permits use of certain smartphone applications; authorizes additional uses; requires certain software features; limits use of convertible virtual currency; prescribes value of convertible virtual currency; provides requirements for digital and smart contracts; requires a digital identity and wallet; prohibits use of convertible virtual currency as an investment; requires use of decision tree; requires separate digital contract to charge a fee; prescribes procedure for payment; requires ecosystem operator to collect fees and taxes; requires ecosystem operator to perform certain accounting; prescribes method of compensation; requires ecosystem operator to provide certain information; requires the Oklahoma Tax Commission and Office of Management and Enterprise Services to make certain determinations; authorizes the Tax Commission, Office of Management and Enterprise Services, secretary of state, and state treasurer to promulgate rules; allows payment of taxes from certain sources; permits Tax Commission to appoint agents for certain purposes; creates requirements for distributed ledger technology asset offering agents; creates requirements for distributed ledger technology asset offering ecosystem operators; authorizes the Tax Commission and Office of Management and Enterprise Services to promulgate rules to validate transactions; allows certain contracts; allows use of memorandums of understanding; allows certain working groups; prohibits certification as a class action; requires certain security in action under this act; provides for severability; provides for non-codification; provides for codification; and provides an effective date.
Oregon	None	
Pennsylvania	HB 1370	Allows for a waiver for innovative financial products or services; provides for duties of the secretary of the Department of Banking and Securities and

State	Bill Number	Bill Summary
		the secretary of the Commonwealth; establishes the Economic Growth and State Utility Account.
Pennsylvania	HB 1800	Relates to state voting rights; provides for legislative authority over elections; establishes the Bureau of Election Audits; provides for special standing in challenges to the election code; provides for reports on implementation of elections; provides for powers and duties of county boards and provides for county boards of elections and satellite offices; provides for district election boards, for qualification of election officers. Requires the secretary of the commonwealth to investigate the use and viability of blockchain technology for the purposes of electronic voting by disabled voters and absentee voters as provided for in the Uniformed and Overseas Citizens Absentee Voting Act.
Pennsylvania	HR 121	Establishes the Blockchain Working Group.
Puerto Rico	None	
Rhode Island	HB 7254	This bill establishes an economic growth blockchain act, sets regulations for the sale of hemp, regulates virtual and digital assets, and establishes depository banks for these purposes.
A. Samoa	Not available	
South Carolina	None	
South Dakota	None	
Tennessee	HB 2643 SB 2855	Establishes the blockchain and cryptocurrency study committee.
Tennessee	HB 2644 SB 2882	Authorizes a county, municipality, or the state to invest in cryptocurrency, blockchains, and non-fungible tokens.
Tennessee	HB 2645 Signed by governor 4/20/22, Public Chapter 852 SB 2854	Enacts provisions governing decentralized organizations.

State	Bill Number	Bill Summary
	Substituted 4/6/22	
Tennessee	SB 535 Signed by governor 4/14/22, Public Chapter 861	Prohibits local governmental entities from paying, compensating, awarding, or remitting funds in the form of, or facilitating the conversion of compensation or funds to, blockchain, cryptocurrency, non-fungible tokens, or virtual currency to an individual person, corporation, or other entity (or procuring the services for the performance of any such actions) without the prior written approval of the state treasurer.
Texas	No regular 2022 legislative session	
Utah	HB 335 Signed by governor 3/24/22, Chapter 363	This bill creates the Blockchain and Digital Innovation Task Force. This bill: creates the Blockchain and Digital Innovation Task Force (the task force); directs the appointment of members to the task force; directs the task force to: develop knowledge and expertise about blockchain and related technologies; and make policy recommendations related to blockchain and related technologies; requires the task force to report annually to the Business and Labor Interim Committee and the Legislative Management Committee; and sets a repeal date for the task force.
Utah	HB 485 Enacting clause stricken 3/4/22	This bill amends provisions related to electronic transactions and appearances. This bill: defines terms; clarifies that, for purposes of the Uniform Electronic Transactions Act, the term "electronic" includes "blockchain"; and permits governmental agencies to develop requirements with respect to: electronic transactions; remote appearances; and certifying documents through blockchain.
Vermont	None	
Virginia	HB 80 Passed House 2/14/22	Requires the Department of Health to establish the Healthcare Regulatory Sandbox Program to enable a person to obtain limited access to the market in the Commonwealth to temporarily test an innovative health care product or service on a limited basis without otherwise being licensed or authorized to act under the laws of the Commonwealth. Under the Program, an applicant requests the waiver of certain laws, regulations, or other requirements for a 24-month testing period, with an option to request an additional six-month testing period. The bill provides application requirements, consumer protections, procedures for exiting the Program or requesting an extension, and recordkeeping and reporting requirements. The bill requires the Department to provide an annual

State	Bill Number	Bill Summary
		report to the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health that provides information regarding each Program participant and recommendations regarding the effectiveness of the Program. The bill has an expiration date of July 1, 2027.
Virginia	HJR 30	Establishes a 20-member, two-year joint subcommittee to identify research and economic development opportunities to inform a statewide, comprehensive, and coordinated strategy and a potential regulatory framework relating to blockchain technology and cryptocurrency.
U.S. Virgin Islands	None	
Washington	HB 1729	Establishes the Washington blockchain work group (work group) for the purpose of examining various potential applications of and policies for blockchain technology. Requires the work group to submit a report to the governor and the Legislature by Dec. 1, 2023
Washington	SB 5534 Passed Senate 2/9/22	Requires, by Dec. 1, 2022, that the Consolidated Technology Services Agency (also known as WaTech), Department of Health, Department of Licensing, institutions of higher education, and the secretary of State to each report which programs, services, and projects may be well-suited to the use of verifiable credentials as a means of improving efficiency, customer experience, and safeguarding privacy. Requires WaTech to create a process for developing a recommended trust framework for verifiable credentials (trust framework) in Washington, by Oct. 1, 2022. Requires WaTech to develop and submit the trust framework, and any recommendations on legislation to implement the trust framework, to the Legislature by Dec. 1, 2023.
Washington	SB 5544 Signed by governor 3/30/22, Chapter 226	Establishes the Washington blockchain work group.
West Virginia	HB 4010	Relates to digital assets and recognizing virtual currency.
West Virginia	SB 504	Provides statutory framework for treatment of digital assets.
Wisconsin	None	

State	Bill Number	Bill Summary
Wyoming	SF 68 Signed by governor 3/9/22, Chapter 36	Relates to corporations; amends statutory provisions regulating decentralized autonomous organizations; amends definitions; makes technical corrections; amends the obligations of members and dissociated members; amends factors for dissolution of a decentralized autonomous organization; repeals definitions and provisions related to decentralized autonomous organizations; and provides for an effective date.

Related Resources

Updated February 15, 2023

2023 Consumer Data Privacy Legislation

State legislatures have long been involved in regulating privacy of various types of information or of specific industry sectors. For example, laws protecting student information, individuals' social security numbers, medical information and other types of information.

Financial Services Technology

Table

Updated February 24, 2022

Payday Lending 2021 Legislation

Summary of the 2021 state legislation regarding payday lending and payday lending alternative programs.

Financial Services

Table

Updated December 21, 2021

Consumer Report Security Freeze State Laws

This page contains a 50-states chart that provides statutory citations and information on who can request a a consumer report security freeze.

Financial Services

Table

IS IT ETHICAL FOR LAWYERS TO ACCEPT BITCOINS AND OTHER CRYPTOCURRENCIES?

By James M. McCauley, Sharon D. Nelson, and John W. Simek

(This article appeared in Journal 23,3 (/media/730466/journal-23-3.pdf), September 2018)

The Ethics Committee recently received an inquiry regarding the ethical implications of a lawyer receiving cryptocurrency (Bitcoin) as payment for legal fees or as payment for the benefit of a client or a third party. The inquiry was referred to a subcommittee for further review. Nebraska is currently the only jurisdiction that has issued an opinion on the ethical issues implicated by the multifaceted nature of cryptocurrency. The Virginia State Bar recently published an article referencing the Nebraska opinion and noting their concerns about the implications of cryptocurrency on a lawyer's professional responsibility. With permission from the authors and the Virginia State Bar, that article is republished here for our members' contemplation.

Cryptocurrency Baseline

Bitcoins are digital currency, and yes, lawyers are beginning to accept them from clients. They are also known as virtual currency or cryptocurrency since cryptography is used to control Bitcoin creation and transfer. They use peer-to-peer technology with no central authority or banks. The issuance of bitcoins and the managing of transactions are carried out collectively by the network.

Cryptocurrencies are created by a process called mining—by becoming a miner of cryptocurrencies, you make money (not much unless you are a major league miner). We won't go into all of the technology that is used to create and verify the transactions since it will probably make your head hurt. Mining is accomplished by executing complicated mathematic operations that take a lot of processing power. Hence the new phenomenon of cryptojacking in which miners hijack the computing resources of unknowing victims so they can mine cryptocurrencies. And yes, your network could be victimized and there is little chance you would know unless so much power is used that your network slows down.

Today there are a lot of different cryptocurrencies. Bitcoin is still one of the most well-known and popular. However, other cryptocurrencies such as Ethereum, Bitcoin Cash, Monero, Litecoin, Ripple, Dash, and others are gaining in popularity. They promise to scale better than Bitcoin and to provide stronger anonymous protections. As of April 26, 2018, the amazing number of different cryptocurrencies is 1,759 according to investing.com's current list located at <https://www.investing.com/crypto/currencies>. With all the various "flavors" of digital currencies, we're sure you'll find one to your liking.

All cryptocurrency transactions are recorded in a computer file called a blockchain, which is synonymous to a ledger that deals with conventional money. Users send and receive Bitcoin and other cryptocurrencies from their mobile device, computer, or web application by using wallet software. You can even use cloud services to host and manage your wallet(s). Frankly, we prefer to have direct control and keep our wallet(s) stored on local devices. Of course, don't forget to back up your wallet(s).

We won't get into all the technical and legal issues surrounding cryptocurrencies. Suffice it to say that these virtual currencies are here to stay and have value, although they remain extremely volatile. In the US, cryptocurrencies are regarded as property rather than cash, with all the consequent tax implications.

Ethical Issues

Let's deal with some of the ethical issues concerning the acceptance of cryptocurrencies.

Nebraska is the only state we are aware of that has issued an ethical opinion specifically for Bitcoin usage. Nebraska's opinion states that lawyers may accept payments in digital currencies, but must immediately convert them into US dollars. Any refund of monies is also made in US dollars and not in digital currency.

It is well known that an attorney can't access client funds until they are earned, hence the existence of trust accounts. Also, an attorney can accept property as payment, but there must be a valuation for the property. This is where accepting digital currencies could get a little muddy. The Virginia rules require that a fee for legal services must be "reasonable." If attorneys receive digital currency, they should immediately convert and exchange it to actual currency AND put it in their escrow account. This effectively (and actually) puts a value on the cryptocurrency, which is exactly the process described in the Nebraska opinion. As part of the reconciliation and billing process, the lawyer would just note wording stating the number of bitcoins or other cryptocurrency and the market value at conversion. What the Nebraska opinion did not address is the handling of transaction fees, which can be rather substantial. The majority of lawyers will use an exchange to convert the cryptocurrency into cash. Who pays the fee for this conversion? And what if the client insists that the lawyer hold an advanced fee payment in Bitcoin instead of converting it to US currency? If Bitcoin increases in value, who gets the windfall—the lawyer or the client? Who bears the risk if Bitcoin drops in value?

Criminal defense lawyers, of course, can face potential ethical and even criminal issues if clients pay them with assets they are determined to have acquired through illegal conduct. And yet, almost invariably, when we hear about lawyers accepting Bitcoin as payment, the lawyers involved are criminal defense attorneys. For all the talk of "privacy" and the frequent inability to prove the connection between illegal conduct and Bitcoin, it is clear that federal authorities believe the bitcoins are used to keep criminal activities financially untraceable. On the other hand, many legitimate businesses in the United States and Europe accept Bitcoin, including Dish Network, Overstock.com, and Expedia.

Holding Cryptocurrencies

What if the lawyer wants to keep the cryptocurrency for their own use? Can they just keep the cryptocurrency in their own electronic wallet and deposit cash in the trust account on behalf of their client? The answer to this question depends on whether the Bar considers bitcoins "funds" or "property" that a client entrusts to the lawyer. See Rule 1.15. Client "funds" belong in a trust account, but client "property" must be kept safe by the lawyer. Since a lawyer cannot deposit bitcoins in a trust account, describing it as "funds" is a problem.

When a client gives a lawyer bitcoins, it is "property," not actual currency, but Rule 1.15 requires a lawyer to safeguard client property. This means making sure your digital "wallet" is secure and backed up. If the lawyer wants to keep the bitcoins and give the client the equivalent value in cash, those funds must go into the trust account if the bitcoins were payment of an advanced fee. This would require the client's consent and would be subject to the business transaction rule under Rule 1.8(a), requiring that the terms of the transaction be fair and reasonable, confirmed in writing, and that the client be advised to seek independent counsel before entering into the agreement.

One legal ethicist, the late Professor Ronald D. Rotunda, disagreed with the Nebraska Bar's Ethics Opinion 17-03 that says the lawyer must convert the cryptocurrency immediately into US currency. *See, Bitcoin and the Legal Ethics of Lawyers*, dated November 6, 2017, on Justia's Verdict blog at bit.ly/2OzOFoT. Professor Rotunda correctly explains how Bar opinions have allowed that, subject to certain requirements, lawyers may accept from their clients' stock and tangible property in lieu of cash for payment of legal fees even if the stock or property might fluctuate in value after the lawyer has accepted it. In Rotunda's view, bitcoins are like gold in the sense that it is worth whatever people are willing to pay for them.

The Nebraska opinion requires that lawyers "mitigate the risk of volatility and possible unconscionable overpayment for services" by not retaining the digital currency and by converting it "into US dollars immediately upon receipt." To Rotunda, it is a business decision rather than an ethics decision if the client wants to shift the risk of volatility to the lawyer. If a client and lawyer agree to pay the lawyer with stock in lieu of currency, and the original value is reasonable at the time the parties contracted, the fact that the stock goes up or down in value does not make the acceptance of the stock unethical. The Bar opinions "look back" to the time that payment was accepted to determine whether the payment was "reasonable," and the lawyer may suffer a loss or a windfall, as the case may be. These opinions do not require that the lawyer sell the stock immediately to convert it to cash. In some initial public offerings, there may be "blackout periods" in which the lawyer is prohibited from selling the stock. That Bitcoin might drastically drop in value, resulting in the lawyer being underpaid, is not an ethics issue either, according to Rotunda. Lawyers are educated adults and can make the call to sell or keep the bitcoins and accept that risk.

Rotunda may have a point if the client pays the lawyer in bitcoins for past legal services. In that case, the lawyer has earned the fee and the bitcoins becomes the property of the lawyer. The lawyer can accept risk with respect to his or her own property. That the bitcoins cannot be deposited into a bank account is not an ethics issue if the bitcoins are payment toward an earned fee. Even if the client paid the fee in cash, a lawyer cannot deposit an earned fee in a trust account because that would be commingling. The ethics rules do not require the lawyer to deposit an earned fee in an operating account either. The lawyer could deposit the cash directly into a personal checking account.

If the client gives the lawyer bitcoins as an “advance fee,” however, there are some problems. Rule 1.15 requires that a lawyer safe keep property that the client has entrusted to the lawyer. An “advanced fee” is property of the client until the lawyer has earned it, per Legal Ethics Opinion 1606. If Bitcoin plummets dramatically in value, and the client discharges the lawyer before the work is completed, the lawyer will not have kept safe sufficient funds or property to make a refund of the unearned fee as required by Rule 1.16(d); or, if the lawyer accepts Bitcoin in settlement of a client’s claim, and Bitcoin loses value, the lawyer is unable to pay the client or to discharge third-party liens as required by Rule 1.15(b). The lawyer may discharge these obligations with other funds or property, but in doing so the lawyer would be making payments “out of trust” and not in compliance with the rules.

Another problem arises out of the fact that the Bar’s regulation of trust accounts and recordkeeping has not kept pace with technology and does not contemplate cryptocurrency. Lawyers are required to keep records of trust account transactions that are auditable and verified through an approved financial institution’s records and statements. No regulatory Bar is currently equipped to audit Bitcoin transactions and storage.

The Future

Unless some serious security measures are built into Bitcoin, we wouldn’t recommend that you invest any serious wealth with the virtual currency. Certainly some virtual currencies are better protected than others, but you still might want to think long and hard about accepting Bitcoin or other cryptocurrency as lawyers. The bulk of people we know regard Bitcoin as “shady money,” and they may well regard lawyers accepting Bitcoin as “shady lawyers.” Will Bitcoin be legitimized one day in the eyes of average Joes and Janes? Maybe—but not soon.

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United States: Emerging Discovery Issues In Blockchain Litigation

20 May 2019

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The increased use of blockchain technology and, in particular, cryptocurrencies, has given rise to a variety of disputes, including government enforcement actions and private litigation. Substantive issues regarding the offer, sale and trading of digital tokens are coming before the courts, prompting novel discovery questions in these cases.

Blockchain Litigation

Blockchain technology is a distributed ledger system that allows for the creation of secure and presumably immutable records. Certain blockchains are public and permissionless, allowing anyone to join, while others are private and only accessible by permissioned users (e.g., banks). To date, most applications of the technology have been to record transactions, including those involving digital assets such as cryptocurrencies.

Depending on the circumstances, some digital assets may be subject to regulation by the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the U.S. Treasury Department, federal banking regulators, and/or state and foreign regulators.

In an effort to regulate certain digital assets and related transactions, the SEC and CFTC each have taken a number of enforcement actions, including filing complaints and cease-and-desist proceedings against promoters of initial coin offerings, fund managers investing in digital assets, and decentralized exchanges in which coins and tokens can be traded.

Private cryptocurrency litigation has mostly involved class action complaints filed by plaintiffs purporting to represent investors who bought a particular cryptocurrency, alleging securities violations and various state law claims.

Potential Discovery Issues in Block-chain Cases

The increase in litigation involving blockchain technology may give rise to issues of first impression in the discovery context as courts apply existing principles to the unique characteristics of blockchain technology, including the discovery of information that is public and transparent, the decentralized and immutable nature of blockchain transactions and the use of "smart contracts" to execute transactions.

Transparency: One novel aspect of blockchain technology is that transaction records are transparent, and thus viewable to all, and decentralized, meaning that, for public blockchains, there is no central governing or managerial body. Since no party is in "possession, custody or control" of transaction records, a party receiving a discovery request for such information might have legitimate grounds for objecting.

However, this is not always the case. Many blockchain projects involve data stored on a blockchain as well as "off-chain." This could yield discovery battles concerning where the line is drawn and what information a party actually controls.

In addition, the parties to block-chain transactions are anonymous or "pseudonymous," such that the identities of transacting parties generally are not publicly available. Rather, the public can only see wallet addresses engaged in the transaction, while third parties may hold information linking wallets to identity. As a result, plaintiffs and enforcement agencies have sought discovery of ownership information.

For example, in *Paige v. Bitconnect Int'l PLC* plaintiffs accusing a cryptocurrency exchange of operating a Ponzi scheme were permitted to obtain disclosure of all cryptocurrency wallet addresses, trading account addresses and the identity of account holders. Similarly, in *United States v. Coinbase, Inc.*, the court ordered a digital exchange to provide the IRS with information regarding account holders' identities to the extent the account holder had a taxable gain.

Immutability: When engaging in discovery, parties generally are mindful of the ultimate admissibility of relevant evidence, and another issue of first impression may be the admissibility and authenticity of blockchain records at trial. Because blockchain records are meant to be immutable they are arguably more reliable than other data sources and could provide an indisputable chain of custody.

While courts have not addressed the admissibility of blockchain records specifically, such records would likely qualify as computer-generated information that can be self-authenticated under Rule 902 of the Federal Rules of Evidence, provided that the party seeking introduction can submit a written certification from a qualified person. Indeed, the state of Vermont has enacted a statute permitting blockchain records to be authenticated and admitted when accompanied by a written declaration of a qualified person, unless there is an indication of a lack of trustworthiness.

Blockchain records also may be deemed analogous to statements or information generated by computers, which some courts, such as in *United States v. Lizarraga-Tirado*, have held do not constitute hearsay. Interesting questions may arise regarding the accuracy or completeness of information reflected on a distributed ledger in light of potential evidence of "off-chain" transactions and so-called "forks" in the ledger based on errors and other events.

Jurisdiction: Because blockchain networks are decentralized, they generally involve a limitless number of computers globally distributed. Accordingly, these networks may not have a presence, or involve parties engaging in activities, in any one physical location. Therefore, blockchain litigation may involve questions around personal jurisdiction, extraterritorial application of U.S. laws, and judgment collection, and jurisdictional discovery may be sought where these issues arise.

In some cases, courts are able to navigate disputes over jurisdiction where a party is an identifiable "on-ramp" to a blockchain or where the conduct at issue occurred before full decentralization took place. For example, in the *Tezos* securities litigation, the court held that the defendant was subject to personal jurisdiction based on factual allegations that the websites were in English, hosted in the U.S., and the offering was designed to accommodate U.S.-based participation. In finding there was proper extraterritorial application of the Securities Exchange Act of 1934, the court considered where the website was hosted and operated, and whether "a network of global 'nodes'" in the blockchain were "clustered more densely in the United States than in any other country."

On the other hand, a Colorado federal court in *Shaw v. Vircorex* recently dismissed on personal jurisdiction grounds a class action brought by an investor in a defunct online digital currency exchange after its operators allegedly froze customer funds while descending into insolvency. The court held there was no evidence that the account process involved any negotiations (which, in a traditional transaction, would have taken place at least in part in Colorado) or that the defendants purposefully directed their activities at Colorado or even knew that the injury would be felt there.

Smart Contracts: Going forward, many blockchain transactions will be conducted using "smart contracts," or pieces of code that automatically effectuate transactions on a blockchain, such as moving funds upon certain triggering events.

The use of smart contracts, and disputes arising therefrom, may create novel discovery issues relating to the contracting parties' intent and what steps the code actually executes. Unlike traditional contracts, the "drafter" of a smart contract generally is a third-party programmer that may not be involved in any other way in the transaction at issue.

Litigants will thus need to consider how to obtain (and ultimately present in court) admissible evidence regarding what might otherwise be straightforward issues of contract interpretation, including whether to rely on technical experts or other third parties to explain how the parties' agreement is accurately reflected in a given smart contract's code. Furthermore, as non-programmers may struggle to understand even the most basic smart contract, litigants may need to rely more heavily on expert discovery to explain how the smart contract operates and the manner in which its program carried out the parties' supposed agreement.

Originally published in *Legaltech News*

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Banking Law
March 11, 2019, 4:51 AM

Client Cryptocurrency Payments May Pose Ethical Risks for Lawyers

By Melissa Heelan Stanzione

- Law firms increasingly accepting cryptocurrency as payment
- But there are potential risks including how federal regulators view it, ethics lawyers warn

Law firms can accept cryptocurrency as payment or help their clients with initial coin offerings, but they must be mindful of ethics concerns, law firm ethics experts have said.

Cryptocurrencies and ICOs, which have both become popular in recent years, were a key discussion topic on a panel at the Legal Malpractice & Risk Management Conference in Chicago.

Cryptocurrency is a digital currency where transactions are recorded on a public digital ledger called a blockchain and trade on exchanges that operate like stock exchanges. Popular forms of cryptocurrency include Bitcoin and Ethereum. An ICO is a method of funding projects through the creation and sale of cryptocurrency.

Paid in Crypto

Despite the risk and volatility associated with crypto markets, law firms, including Big Law players, appear to be accepting cryptocurrency as payment for services more and more.

Matthew K. Roskoski, deputy general counsel for Latham & Watkins, and one of the panelists, said lawyers in general may want to accept cryptocurrency to show “we’re hip and cool and on top of stuff.” He said that despite cryptocurrency’s downsides, lawyers are in the client-service business, so if a client asks for the option, attorneys may dive in.

But besides being a potentially risky bet financially, accepting cryptocurrency as payment for legal services has possible ethical pitfalls. These risks are driven by two factors, the panelists said.

Roskoski explained that one issue is that cryptocurrency appreciates in value over time, unlike cash, so lawyers who accept it from clients may decide they don’t want to spend or liquidate it.

This is not a problem if a lawyer accepts it as payment for a bill. In that case, the firm can do what it wants with it. But if cryptocurrency is accepted as a retainer, which is money that’s placed into a trust and is client money until earned by the lawyer, the situation gets trickier.

“Cryptocurrency does not fit with the model for trust funds — lawyers should not accept cryptocurrency as trust money,” Roskoski said.

Richard Supple, general counsel for Hinshaw & Culbertson, noted the second issue, which is that at least in the eyes of the IRS, cryptocurrency is property, not actual currency.

And Rule 1.15 requires lawyers to safeguard client property.

Both factors come into play when a lawyer decides to accept cryptocurrency as payment of fees. In this case, Supple said, the lawyer could be deemed by regulators to be making a deal with a client with respect to the client's "property" (of uncertain or varying value). Supple said this would probably trigger the requirements of Rule 1.8(a) like a stock-for-fees arrangement.

If a lawyer enters into an agreement under 1.8 (a)—which allows a lawyer to enter into a business transaction with the client if the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client—the lawyer has to make sure everyone understands their role in the deal and that they're not the client's attorney in this deal, Supple said.

The lawyer should insist the client has a second lawyer before making this agreement, he said.

"1.8(a) is scary because deal has to be 'reasonable' and 'fair,'" Roskoski said.

How should the lawyer judge a reasonable value for cryptocurrency? The lawyer should recite in the agreement what the fairness considerations are like the risks of depreciation, for instance, he said.

Only one state, Nebraska, has issued an ethics advisory opinion providing guidance on accepting cryptocurrency for payment, according to the attorneys.

In 2017, Nebraska said that these payments are fine to accept as long as they are sold or liquidated right away.

Riskier Business

Roskoski said that a riskier proposition is helping a client who wants to put together an ICO, due to regulators' statements on this category of offering.

ICOs have drawn controversy since they emerged a few years ago. ICO funding saw a large downturn last fall, which has been linked to increased U.S. Securities and Exchange Commission attention to these offerings.

SEC Chairman Jay Clayton said in 2018 that an ICO is a securities offering. He's called lawyers the gatekeepers of securities law, a statement that Roskoski said suggests Clayton believes lawyers should police the space.

Roskoski admitted that the many unknowns around the regulation of ICOs make him "nervous."

"Working in ICO space is subject to risk and a liability scheme we have no track record in," so it's hard for lawyers to know what transactions are safe and what are risky, he said.

"[But] there's real money to be made there so people don't want to wash their hands of it entirely." Roskoski said.

The SEC has taken action against numerous companies relating to ICOs, including Paragon Coin over allegations of an unregistered offering of tokens. It's also targeted celebrities like boxer Floyd Mayweather Jr. and music producer DJ Khaled, who the SEC said promoted ICOs on social media without disclosing the amount of compensation received from the issuer for the promotions.

As a result of this uncertainty, Roskoski said lawyers who decide to work on an ICO, should vet clients with more care and have a higher threshold on whether to move ahead with the deal.

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NATIONAL LAW REVIEW

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NEW ARTICLES

Blockchain, Web3, and the Law: Is the legal profession making the most of these new opportunities?

Wednesday, November 9, 2022

Law firms quickly found a lucrative line of business advising clients on the legal and regulatory issues surrounding blockchain and the Web3 ecosystem. But are they too slow to adopt these technologies for their own operations?

Blockchain and other distributed ledger technologies (DLTs) underpinning cryptoassets are being adopted across the business world for a variety of purposes. In the finance sector, DLT is being used to create decentralized organizations to provide financial services without centralized intermediaries, bypassing banks, traditional exchanges, and brokers in a

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blockchain-based rice trading platform. In fact, **Forbes magazine** has identified 15 industries that could significantly benefit from blockchain technology.

It is a trend that has become known as Web3, or Web 3.0, the latest version of the world wide web that is based on DLT. Even law firms, often slow to adapt to innovative technology, are embracing Web3. Most are finding out how it works and the legal and regulatory implications so they can advise clients operating in this new environment.

Some law firms are adopting it themselves to streamline their operations and make them more secure and transparent. To facilitate this, some have joined the **Global Legal Blockchain Consortium** to develop standards that will govern the use of blockchain technology in law. However, *using DLT in one's own operations* is quite different from *simply advising clients on DLT*. Generally speaking, the legal profession appears to be in the slow lane of the Web3 ecosystem. Is there any likelihood of them speeding up adoption for their own use?

What is Web3?

First, some background. Web 1.0 was the initial phase of the world wide web that was characterized by static websites with little or no user interaction. Web 2.0 was the second phase which started about 20 years ago as websites evolved allowing users to interact with website owners and other users on social networking platforms like Facebook. Web 2.0's data is highly centralized and controlled by a relatively small number of big technology companies, like Alphabet, Amazon, Apple, Meta, and Microsoft.

Web3 is based on blockchain technologies, decentralization of control and data, and cryptoassets. Its proponents argue that it is less influenced by Big Tech and that it provides better security, privacy, and scalability. Web 2.0 still dominates, but Web3 is gaining ground.

Web3 has its critics. Under the headline "Web3 is just a fresh serving of the same old crypto nonsense", **FT columnist Jemima Kelly writes**: "In truth, Web3 has become just the latest marketing term used to try to prop up and repackage the overlapping ideas of crypto, non-fungible tokens, and 'decentralized finance', which all seemed brilliant innovations until the whole market started to tank."

Law firms as providers of legal advice on Web3

Even if Web3 is just a marketing term, there is no denying that DLT is on the rise. One example of the knowledge law firms are acquiring and disseminating in this arena is provided by Clifford Chance, one of the UK's top five law firms. The 400 lawyers in its global **Tech Group** – among them specialists on blockchain and cryptocurrencies – "deliver strategic tech law advice to help clients stay ahead of the curve and outstrip the pace of change".

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cost savings,” says the group. “But it also raises a wide-range of new legal issues and as such multidisciplinary legal expertise is required to fully map the design challenges that a commercially viable blockchain solution must address.”

Clifford Chance’s Tech Group advised a global bank on the implementation of a blockchain-enabled remittance platform, using cryptocurrency-like functionality to perform efficient cross-border transfers. It advised a British banking association on its policy work on blockchain, including preparing its response to a European Securities and Markets Authority’s discussion paper on the application of DLT to the securities markets. And it advised an international insurance industry consortium on setting up a reinsurance platform using blockchain and smart contracts.

To get a broader idea of how the legal industry is informing itself about Web3 to enable it to advise clients on these matters, look no further than the Law Society’s second edition of *Blockchain: Legal and Regulatory Guidance*, published earlier this year. The 236-page report tells lawyers what they need to know about blockchain, cryptoassets, DLT-based platforms and products, decentralization and smart contracts. It explains how these technologies are changing the way legal, financial and property services are carried out and their impact on litigation.

Sir Geoffrey Vos, Master of The Rolls, writes in the foreword that “every lawyer will require familiarity with the blockchain, smart legal contracts and cryptoassets – both conceptually and functionally”. These requirements come at a time when central banks are close to launching their own digital currencies “that will put cryptoassets into mainstream use”, when there is “widespread adoption of digital transferable documentation”, and when we are seeing a transition from traditional software programs such as Microsoft Word to smart machine-readable documents.

The Law Society is the professional association representing solicitors in England & Wales, but the report was largely written by the Blockchain Legal and Regulatory Group in Tech London Advocates. TLA is a collection of technology leaders whose blockchain group comprises lawyers and technologists from the UK’s leading law firms, legal consulting firms, and academic institutions.

Law firms as adopters of Web3 for their own operations

While it is clear that law firms know enough about Web3 to give their clients valuable legal and regulatory advice on the matter, and to assist with litigation, it is less clear how many law firms have actually adopted Web3 technologies themselves to run their own businesses. There is plenty of evidence to show that some firms are well-advanced down this route. Yet law firms have been slow to adopt leading-edge technologies in the past. The suspicion is they are behind the curve again with blockchain adoption.

There is no shortage of advice to law firms on how to use this new technology. The second part of the Law Society report highlights how they can use blockchain-based processes in areas such as data governance and protection, smart contracts, intellectual property rights, tax, ESG (environmental, social, and governance), and dispute resolution. For example, it gives an in-depth analysis of the advantages and disadvantages of smart legal contracts (SLCs), examples of successful SLC projects to date, and the impact of decentralized autonomous organizations (DAO) on the legal profession. A DAO is an open-source interface functioning through smart contracts for users to interact with their own digital assets; in most jurisdictions, a DAO is therefore just software, not a company or other legal entity, and that creates uncertainty for lawyers.

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streamline and simplify their transactional work, digitally sign and immutably store legal agreements,” it says in its explanatory paper [Blockchain in the legal industry](#).

“Using scripted text, smart contracts, and automated contract management reduces excessive time spent preparing, personalising and maintaining standard law documents,” it adds. “These cost savings are passed on to the customer. Additionally, blockchain democratises access to the justice system by cutting down on consumer complexity and lowering hefty legal fees.”

Because many manual tasks can be carried out automatically, the hours spent drafting and amending legal documents are significantly reduced, which in turn can push down the hourly fees lawyers charge clients. Lower fees could increase demand for legal services.

One of the best indications of blockchain intent from the legal profession is the [Global Legal Blockchain Consortium](#), mentioned earlier. It comprises 300 law firms, large companies, technology firms, and universities. Major law firms among its members include Baker McKenzie, DLA Piper, Dentons Canada, Hogan Lovells and Freshfields.

The consortium was created to develop standards to govern the use of blockchain technology in law, in relation to things like data integrity, data security, and data privacy in contracts, documents, and communications; interoperability between large corporate legal departments and law firms; and using blockchain to augment legacy systems to extend their useful life.

Law firms slow to adopt Web3?

All is well and good. But many law firms are not convinced they should rush to adopt Web3. They are unlikely to admit they are technological laggards, but plenty of industry commentators are highlighting that this is the case. “[The legal industry has been slow to modernise](#)”, is how ConsenSys sums up the sector’s take-up of blockchain.

[Notarize](#), a U.S. company that provides online notarization as a “simpler, smarter and safer” alternative to notarising documents on paper, says there is often an unwillingness to change. Although Notarize has won plenty of business – it was placed 24th out of 500 in the Financial Times’ list of “[The Americas Fastest Growing Companies of 2022](#)” – it says “some law firms are resistant to blockchain technology”.

These firms are fearful of obsolescence but hopeful that a significant sector of the population will prefer doing business as they have always done it. “If Web 1.0 and Web 2.0 are any indication, avoiding the implications of new tech is a recipe for reluctant adoption at best, and a loss of millions (or in some cases, billions) at worst,” warns Notarize.

[Jonny Fry](#), CEO of consultancy firm [TeamBlockchain](#), says the introduction and use of any technology in the legal sector is at risk of being a slow process “since lawyers are inherently cautious and reluctant to change – they know only too well the potential legal and financial implications involved”.

Writing for the London business newspaper CityAM, Fry outlines the benefits that blockchain technology can bring to the legal sector, but lists four obstacles standing in the way:

- **Technological indifference.** “Historically there has been a lack of investment in technology in the legal industry,” says Fry.

- **Blockchain is not accepted or trusted in many countries** because of legal concerns about the lack of central governance the decentralized approach.
- **Blockchain is difficult to scale up.** It is limited by the speed at which a peer-to-peer network of participants are able to come to a consensus on the state of a digital ledger of transactions, and this is a reason why the technology is not being used more widely.

The barriers are lifting

There's no denying that the third point, about legal uncertainty, has been holding back law firms. But things are changing. It was only a year ago, in November 2021, that the [Law Commission for England and Wales published advice for the government](#) concluding that the current legal framework is "clearly able to facilitate and support the use of smart legal contracts without the need for statutory law reform".

It added: "Current legal principles can apply to smart legal contracts in much the same way as they do to traditional contracts, albeit with an incremental and principled development of the common law in specific contexts. Although some types of smart legal contract may give rise to novel legal issues and factual scenarios, existing legal principles can accommodate them."

So to conclude, it is only a matter of when, not if, law firms will start using smart legal contracts and other Web3 technologies in a major way.

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