

**Don't Let  
Crypto Be Your  
'Crypto'nite**



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**Table Topic: Ethics!**

**Don't Let  
Crypto Be Your  
'Crypto'nite**



# Thanks to Our Group Members

- Jonathan Zahler
- Charles Wilmott
- Judge L.E. Hutton
- Judge Michael Kalil
- Matthew Hunt
- Vince DiRito
- Kevin Hemphill
- Alexandria Mederos
- Susan Hartman
- TJ Bryant
- Emily Cochran
- Georgia Garnecki
- Chauntel Miller
- Bethany Kotur
- Jasmine Alexander
- Stephanie Anderson

# Cryptocurrency Basics

Guest Speaker:

Eric Jaffe, Managing Partner



*Foundation Stone*  
**ADVISORS**



## **How Does Crypto Apply to Family Law?**



# Introduction to Bitcoin

AND CRYPTOCURRENCIES



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# Disclaimer

The information provided during this session is for educational and informational purposes only. Any content related to cryptocurrencies, investments, or financial topics is not intended as financial advice. The decision to engage in any investment activities, including those involving cryptocurrencies, should be made based on your own research.





## Background

- Tech Space my whole life specializing primarily in legal IT:
  - Rogers Towers
  - Marks Gray
- How I became a Bitcoiner (2015)
- Founder of Everything Blockchain
- Today I spend most of my time in the cryptocurrency space.
- Collaborated with Alex on a highly sophisticated case where over \$50m in cryptocurrency was at stake and one party was really tech savvy while my client was not.





# History of Money

- Seashells
- Salt
- Gold and Silver
- Fiat – average lifecycle is only around 200 years.

# Primary Characteristics Of Money

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- Medium of Exchange
- Unit of Account
- Store of Value
- Divisibility
- Durability
- Portability





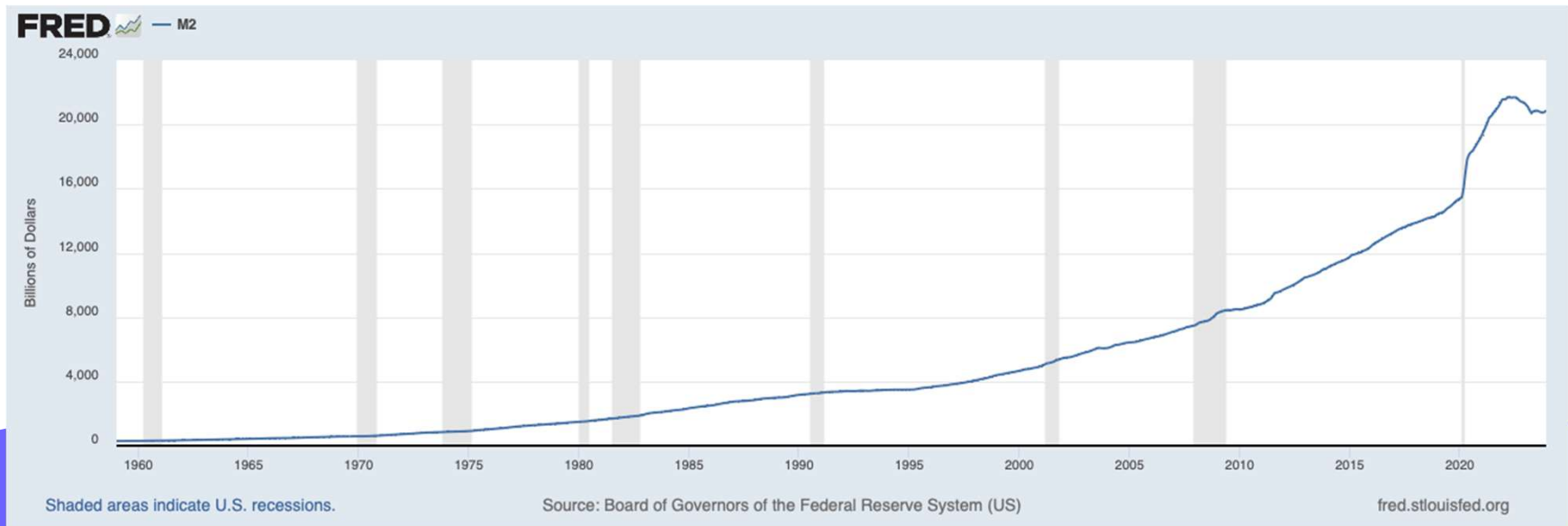


### What is Money Today?

## US Dollar

- Bretton Woods – 1944 Gold Standard
- World reserve Currency
- August 15th 1971 – President Nixon suspended the convertibility of the dollar for gold.
- Began a completely FIAT era where we now have a debt based financial system based on the faith and trust of the US government.
- Next Up – Central Bank Digital Currency & Social Credit Scores

## Fiat Currencies are programmatically debased.





Then Comes Bitcoin

## So Why Bitcoin?

- Oct 31st 2008 – Reformation Day
- Introduced what I would deem to be perfect money.
  - Medium of Exchange
  - Unit of Account
  - Store of Value
  - Divisibility
  - Durability
  - Portability



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So Why Bitcoin?

## Transparent Distributed Immutable Ledger (Blockchain)

- Decentralized
- Fixed supply 21m
- Censorship Resistant ( Think Canadian Farmer Protest )
- Borderless
- Permissionless
- Open Source
- Transparent

*October 31, 2008 – Reformation Day*

# Current Events

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## Asset Growth

#1 Performing asset for the past 15 years



## Institutional Adoption

Digital assets becoming more integrated into corporate finance including banking.



## Government Recognition

SEC Recognition and the launch of 12 ETF's

Stable Coin Act (Genius Act)

Clarity Act (HR 3633)



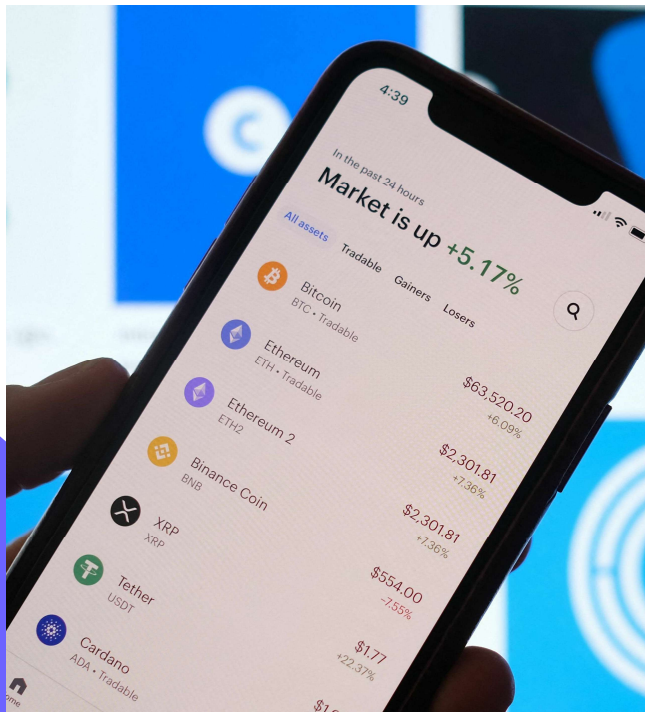
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## Other Cryptocurrencies (altcoins)

- Still generally the Wild West ( Buyer Beware )
- Ethereum
- Tokens – Dogecoin
- Scams – All over the place!





## Using Crypto

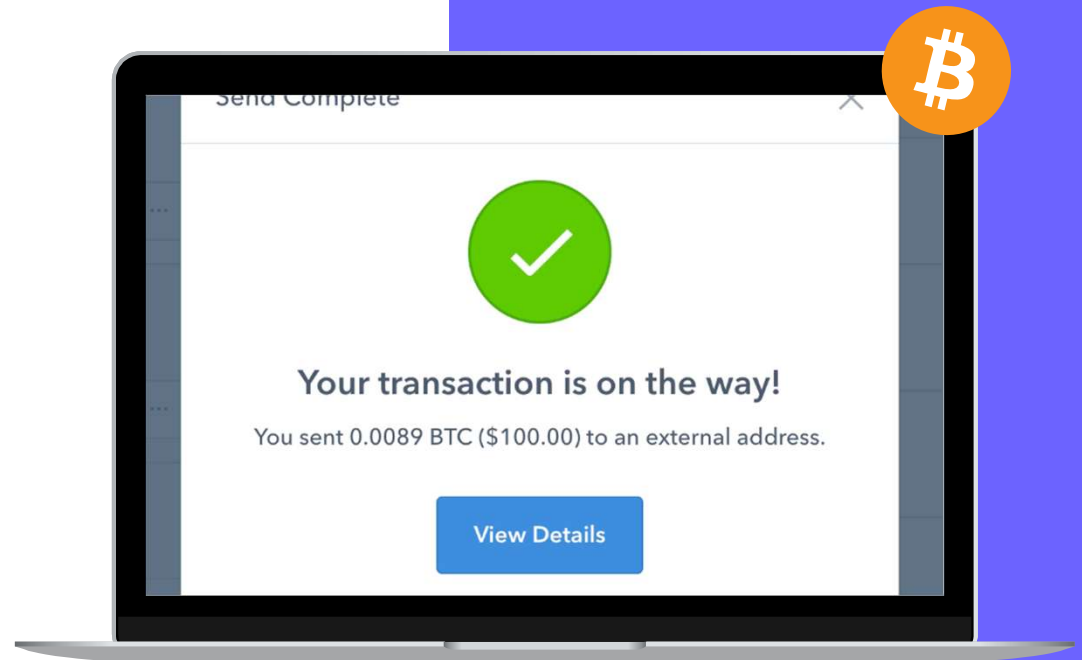
# How Do I Purchase / Store it?

- **Centralized vs Decentralized Exchanges:**
  - Coinbase
  - Uniswap
- **Private Hardware Wallets:** Trezor | Ledger
  - You become the bank manager, bank security guard, bank president, etc.
  - It is now your responsibility to remember your mnemonic phrase, passwords, etc. Metal Back-Up!
  - Never give away your mnemonic phrase or store it on a computer!
- **Hot Wallet Vs Cold Wallet**
- **Brokerage Accounts:**
  - IBIT
  - Robinhood

### Using Crypto

## How Do I Send / Spend It?

- Extremely liquid
- Plenty of great Apps
  - Coinbase – Retail and Advance Trading
  - Crypto.com
  - Strike
  - CashAPP
  - Paypal
- Be Super careful.
  - Cryptocurrency transactions are irreversible.
- Tax Implications
  - Short and long term capital gains





# Discovering Crypto

# Sample Interrogatories

## **INTERROGATORY #1 :**

List all cryptocurrency wallets or accounts (including but not limited to “Bitcoin” accounts) of any kind that you have owned (solely or jointly with another person or entity) since the date of marriage.

## **INTERROGATORY #2:**

Identify all cryptocurrency exchanges or trading platforms where you have open accounts including but not limited to account numbers and dates of activity.

## **INTERROGATORY #3:**

Have you reported your cryptocurrency holdings and transactions in your tax filings? If so, provide the relevant documentation.



# Sample Request for Production

## **REQUEST FOR PRODUCTION #1:**

All documents related to the purchase of any digital currency or cryptocurrency during the period covered by this request, regardless of whether you still own such currency or asset.

## **REQUEST FOR PRODUCTION #2:**

Provide any and all documents or electronically stored information, along with complete, itemized account transaction histories regarding any virtual currency or cryptocurrency in any form whatsoever, including wallet address, in which you have an ownership interest.

## **REQUEST FOR PRODUCTION #3:**

Provide any documents you provided to the Internal Revenue Service or any tax authority or government agency regarding any virtual currency or crypto currency including but not limited to reporting of foreign accounts and reporting of capital gains.



# Signs of Potentially Hidden Crypto

1. Any evidence of cryptocurrency wallets (Apps?)
2. Monitor bank statements, brokerage accounts, and financial records (including Venmo or Cash App) for unusual transactions or transfers to cryptocurrency exchanges and platforms.
3. If one spouse suddenly starts using increased online security measures.
4. If one spouse exhibits a high level of technical knowledge or is interested in computer programming, cryptography or block chain technology.



# How do we find it? Challenges with finding crypto?

- Coinbase, Kraken, Binance
- Bank Statements
  - In or outbound transfers to crypto related entities.
- Wallets: Metamask, Rabby, Jade
- Brokerage Accounts
- Apps on Phones like:
  - Cashapp, Paypal, Strike, Fold, Crypto.com
- Flash Drive, Computer, Paper Wallet

## Chain Analysis Tools:

- Every chain has its own:
- **Bitcoin:** Mempool.Space
- **Ethereum:** Etherscan.io
- **Solana:** Chainanalysis.com



Good part about crypto is every single transaction is captured on an immutable ledger and can be traced from its origin to disposition.





# Valuing Crypto

# How Do We Value?



Pretty Easy but there are considerations:

- All cryptocurrencies are traded through a brokerage account, a centralized or decentralized exchange so there is a definitive price associated with the asset.
- Some are very liquid, and others are not which is an important consideration when it comes to the sale of the asset.
- Possessing the wallet address and keys is vitally important in being able to see exactly how much crypto is owned and being able to transfer it.
- Taxes: Long- or Short-Term Capital gains just like stocks.



# Equitable Distribution

AND CASE LAW

# Treat It Like Any Other Asset:



- ✓ Identify
- ✓ Classify
- ✓ Value
- ☐ Distribute

# **Coe v. Rautenberg, 358 So. 3d 24, 28 (Fla. 4th DCA 2023)**

WE DON'T HAVE MUCH TO WORK WITH

Marital Bitcoins =	10
Bitcoins awarded to FW as past due child support =	1.2
Total Marital Bitcoins minus Child Support Bitcoins =	8.8
Total remaining Bitcoins equitably distributed and awarded to each party =	4.4

This distribution gave 4.4 bitcoins for Former Wife and Former Husband

## But Was that Correct?

Marital Bitcoins =	10
Bitcoins awarded to FW as past due child support =	1.2
Bitcoins equitably distributed and awarded to each party =	5
FH share minus past due child support obligation owed =	3.8
FW share plus child support received =	6.2

# Ideas for Division

## #1: DIVIDE & TRANSFER

- The number of tokens are divided equitably, and the initial assumption is that each person gets  $\frac{1}{2}$  of the total marital tokens.
- On its face, the number of tokens as of the date of filing would be more important than the value of those tokens. You assume the risk that its worth may decline in the future but also gain the chance that its value could rise.
- **Potential Problem:** What happens if the value has gone up significantly since the date of filing? Is that additional value non-marital? How do you account for that additional value?
- (It would be just like a stock going up or down. As long as the underlying asset is not sold and the choice is to distribute and the parties sell afterward.)





# Ideas for Division

## #2: LIQUIDATION – Full

- The former spouse who owns the asset will convert the entirety of the crypto to cash, and distribute the amount per the FJ.

## #3: LIQUIDATION – Partial

### By 3<sup>rd</sup> Party Custodian:

- If a party doesn't have a digital wallet, and their share of crypto is ordered or agreed to be held in trust pending the final judgment, a third-party custodian who can transact in cryptocurrency may be your best bet. The custodian receives one party's share and holds it until the divorce is final. The custodian then liquidates the asset and distributes the money to that party.
- NOTE: Expect to pay fees for this service.

### Owner Liquidation:

- The former spouse who owns the asset will convert the other party's share to cash. (or give the tokens to the other party – very important thing is to also document the cash basis for future tax purposes. On all of these instances it may not be the right thing to sell immediately, or at least taxes should play a role in that decision in addition to market timing)



# Ideas for Division

## #4: OFFSET WITH OTHER ASSETS

- One spouse keeps the entirety of the cryptocurrency value, while the other spouse receives a larger share of the assets (or a smaller share of the liabilities).
- **Actual Problem:** This method is entirely based on the value of the token(s), and you have to determine what that is.



# Table Topics

Kevin Hemphill

# What are an attorney's ethical obligations if they suspect a client is hiding cryptocurrency assets?

See Rule 4-1.2(d). Criminal or Fraudulent Conduct. A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows or reasonably should know is criminal or fraudulent. However, a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.



# What are an attorney's ethical obligations if they suspect a client is hiding cryptocurrency assets?

See Rule 4-1.16(a)(4),(5). (a) When Lawyer Must Decline or Terminate Representation. Except as stated in subdivision (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (4) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent, unless the client agrees to disclose and rectify the crime or fraud;
- or (5) the client has used the lawyer's services to perpetrate a crime or fraud, unless the client agrees to disclose and rectify the crime or fraud.

## COMMENTS:

Attorney **MUST** withdraw once the client's criminal or fraudulent actions are discovered by the attorney.



# Should lawyers have a duty to understand “blockchain” and “crypto assets” to competently advise client

## (Rule 4-1.1 Competence)

An attorney has no special duty of competence for cryptocurrency knowledge, but as with any issue if the attorney does not feel sufficiently comfortable handling a subject matter then he/she should consider consulting with a more experienced attorney in the field, or referring the matter entirely to another attorney, or bringing in an expert in the crypto field to help advise the attorney and the client.



# Should lawyers have a duty to understand “blockchain” and “crypto assets” to competently advise client

“A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. **A lawyer can provide adequate representation in a wholly novel field through necessary study.** Competent representation can also be provided through the association of a lawyer of established competence in the field in question. Competent representation may also involve the association or retention of a non-lawyer advisor of established technological competence in the field in question. Competent representation also involves safeguarding confidential information relating to the representation, including, but not limited to, electronic transmissions and communications.”



# **Is it ethical for an attorney to accept a settlement involving cryptocurrency if the value could change dramatically before transfer?**

Very little guidance on this specific scenario. In the same vein as the competency question, the attorney must make every effort to understand all of the potential factors that could influence the changes that may affect the client's interests. Any settlement agreement, or contract, should be structured with as many of those considerations as possible.





# What is a lawyer's ethical duty if a client provides crypto transaction records that the lawyer suspects are incomplete or altered?

- See the ABA's "Formal Opinion 513" issued August 24, 2024.
- The attorney has a duty to investigate based on "risk," so as not to run afoul of 4-1.16.
- The attorney must conduct an inquiry and assessment "appropriate to the circumstances" to avoid counseling or assisting in the client's fraudulent or criminal behavior.



# **What is a lawyer's ethical duty if a client provides crypto transaction records that the lawyer suspects are incomplete or altered?**

Top 5 factors to consider:

1. Client's identity (including client's beneficial ownership if client is an "entity");
2. The lawyer's experience and familiarity with the client;
3. The nature of the requested legal services;
4. The relevant jurisdictions involved in the representation (e.g. - high risk jurisdiction for money laundering?);
5. The identities of those depositing into or receiving from the lawyer's trust account



# How does Rule 4-3.3 (candor toward the tribunal) apply when a lawyer learns their client misrepresented crypto assets in a financial affidavit?

- Presents a question about confidentiality duty versus previously discussed duty not to engage or assist a client in fraudulent or criminal activities.
- When the fraudulent or criminal activity is known to the attorney, then there is an affirmative duty to confront client.
- Determine whether there is some reasonable explanation that could be presented.



# **How does Rule 4-3.3 (candor toward the tribunal) apply when a lawyer learns their client misrepresented crypto assets in a financial affidavit?**

Advise client that sanctions may be forthcoming if this course of action continues. Attorney should attempt to correct the record in appropriate manner.

Attorney has duty to withdraw if client does not agree to any of the advice or direction of the attorney.

If client presents false information to the Court then attorney should “disclaim knowledge” to the Court. This indicates that there is something afoot. Court can override the attorney/client privilege as necessary and allow attorney to correct the record.



# Cheers!

Bethany Kotur

# Don't Let Crypto Be Your 'Crypto'nite

THANKS FOR ATTENDING

