**Blockchain Technology Legal Training Outline**

Course Objectives

1. Brief review of blockchain technology basics
2. Legal and regulatory issues related to blockchain and cryptocurrency
3. Impact of blockchain technology on existing legal and regulatory frameworks
4. Blockchain technology and global legislation and regulations
5. Blockchain technology and the legal industry
6. Legal considerations when developing and implementing a blockchain solution
7. Introduction

Explain to the students that blockchains are primarily technology and has the potential to impact every industry as well as our legal systems. For example, blockchains have already impacted the following legal areas:

* 1. Compliance with Financial Services Regulations
  2. Intellectual Property
  3. Data Privacy
  4. Smart Legal Agreements
  5. Tax Laws
  6. Corporate Laws
  7. Money Transmittal Laws

1. Brief Review of Blockchain Technology Basics
2. What is blockchain technology?
3. What are cryptocurrencies?
4. Blockchain features
5. Blockchain consensus mechanisms
6. Public v. private blockchains
7. Applications of blockchain technology
8. Overview of Smart Contracts
9. Overview of Decentralized Autonomous Organizations
10. Smart Contracts

Explain that establishing and executing smart contracts can trigger a wide range of legal risks and issues. List several and cote examples. They could include:

|  |  |
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| a. Applicable law | Consider the implications of related legislative instruments such as, the Consumer Protection Act (CPA), the National Credit Act (NCA) or the Copyright Act. Also remember to accommodate legislative amendments across various jurisdictions. |
| 1. Audits | Discuss if self-executing code can replace the legal requirement for audits? |
| 1. Confidentiality | Discuss the juxtaposition of confidentiality and transparency. How can they be balanced? |
| 1. Contract language (writing or just code) | Discuss how our legal system will need to change if smart contracts are generally adopted and have immutable contract terms. How will this impact judicial decisions? |
| 1. Data protection | Discuss who has the authority and capability to protect data on a blockchain? Who can be held responsible for data breaches? |
| 1. Digital identity | Can legal contracts be established between unknow entities? Smart contracts allow it. Historically, AML/KYC requirements have been assigned to banks and financial institutions. How is that likely that change? What are the legal ramifications with |
| 1. Dispute resolution | Since smart contracts are immutable, how will dispute resolution be addressed? Will it be internal or external to smart contracts? |
| 1. General principles of proper governance | Describe the governance model of an organization (with leaders, structure, and delegations of authority). Compare it to how governance would work with a smart contract. |
| 1. Jurisdiction | Discuss how jurisdictional issues would be determined in a smart contract. |
| 1. Legal interfaces | Smart contracts must interface with existing legal structures in order to be valid and how they may conflict with existing legal and judicial requirements. |
| 1. Liability | If the contract has errors in the code and it does not execute the intention of the parties, or if the oracle makes a mistake or error, how will liability be addressed? |
| 1. Non-compete agreements | Consider how competitors could access the same smart contract and how would this situation be disclosed, addressed and mitigated. |
| 1. Non-disclosures | The Smart contract may make certain information to the public or other DAO members. How would the disclosure of information be managed? |
| 1. Privacy | Do the parties to the contract have a right to privacy? Do they have the right to privacy from each other or with each other? |

#### Decentralized Autonomous Organizations (DAOs)

* 1. mExplain that Distributed Autonomous Organizations (DAOs) are organizations that run through rules encoded as computer programs called smart contracts**.** A DAO's financial transaction record and program rules are maintained on a blockchain. Lessons on DAOs include:
  2. What is a DAO?
  3. Genesis DAO
     + May 2016 – Decentralized Venture Capital Fund
     + Raised $160 Million USD

1. The DAO Hack
   1. Problem with the code (recursive withdrawals)
   2. Hacker withdrew $70 Million USD – then stopped
2. Community Response
   1. Hard Folk
   2. Backlash
3. SEC Ruling
   1. DAO was a security offering
   2. Anyone involved may be liable for any violations
4. Another area of legal uncertainty is the establishment, sustainment and disposal of a DAO.

##### Who Owns a DAO?

* 1. Discuss the legal issues with regards to the ownership of a DAO. The discussions should include:

1. Ownership defined by:
   * Use
   * Extract economic value
   * Disposal of the DAO
2. Two Types of DAOs by principle include:
   * Owned by many
   * Owned by none (Autonomous)

##### Are DAOs legal persons?

* Discuss the issue of personhood and if a DAO may be considered a person from a legal perspective.
* What are the legal entity options for a DAO? – corporation, limited liability company, non-profit status, sole-proprietorship, or possibly a new legal entity.

##### DAO Jurisdictional Issues

* Discuss how jurisdictional issues would impact a DAO and how would jurisdiction be established, including the following:
* The country or state the DAO is established
* Where the DAO conducts primary business
* The type cryptocurrency the DAO uses

1. Blockchain Technology, Cryptocurrencies and Securities Law
   1. Howey Test

The “Howey Test” is one of the tools the SEC uses to determine if a transaction is an investment. The Howey Test is based on the Supreme Court case *SEC v. J.W. Howey Co.,* where the Howey Co. sold parts of their citrus land to raise capital to finance additional development. The SEC filed an injunction since Howey Co. did not register the land transactions. The Supreme Court found Howey Co. violated securities laws because the purchasers of the land were spectators that did not possess the “knowledge, skills, and equipment necessary for the cultivation of citrus trees.” As such, the purchasers were investing in Howey Co.’s expertise to work on the citrus land, which would increase the value of their investment.[[1]](#endnote-1) The Howey Test can apply to any industry and any type of investment.

* 1. The SEC uses three steps to apply the Howey test:
* The Investment of Money—The digital asset is acquired in exchange for value.
* Common Enterprise—A business or investment that is managed by third parties.
* Reasonable Expectation of Profits Derived from the Efforts of Others—This is exactly what it sounds like, participants have an expectation of return on investment
  1. Types of Cryptocurrency Securities
* ICOs/STOs are a method of fundraising that companies use to raise funds for their businesses. ICOs are similar to initial public offerings (IPOs) where companies sell stocks to raise capital. As the sale of stocks and IPOs fall under the jurisdiction of the SEC, and ICOs have been raising

massive amounts of money, the SEC has been closely monitoring ICO activity.

* The SEC is protecting investors and removing uncertainty in ICO sales by investigating potentially fraudulent ICOs. The SEC issued numerous investigative reports cautioning investors offering digital assets by virtual organizations are subject to the requirements of the federal securities laws. Such offers and sales, conducted by organizations using distributed ledger or blockchain technology, have been referred to as ICOs or “Token Sales.” Whether a particular investment transaction involves the offer or sale of a security—regardless of the terminology or technology used—depends on the facts, circumstances, and economic realities of the transaction.
  + - SEC ICO Enforcement Cases
    - Exchange Offerings
    - Other types of securities
  1. Tokens
     + What are tokens?
     + How are they different from ICOs and other securities?

1. Blockchain Technology Legislation, Regulations, and Case Law
   1. US Federal Level Legislation
   2. Bank Secrecy Act
   3. Proposed Legislation
2. State regulations
   1. Required filings and reporting requirements
   2. NYDFS License
   3. MSBs, Money Transmitters
   4. Global Legislation
   5. Agency Regulations
      * SEC
      * CFTC
      * IRS
      * Dept of Treasury
   6. Blockchain Technology and Case Law
      * Summaries of relevant case law
3. Blockchain Technology Global Legislation and Regulation
   1. A sampling of countries in each region around the world
   2. Countries where cryptocurrencies are illegal include: Algeria, Bangladesh, Belarus, Bolivia, Cambodia (illegal without a license), etc.
   3. Likely countries include: Argentina, Bahamas, Canada, Cayman Islands, China, Eastern Caribbean, France, Germany, Isle of Man, Japan, Jordan, Marshall Islands, Nigeria, Singapore, South Korea, Switzerland, United Kingdom, etc.
   4. Global Central Banks and Digital Currencies (GDPR)
      * Explain key provisions and how they work
      * Has the EU promulgated a world standard for privacy?
      * Legal Risk and Uncertainties: enforcement of smart contracts, tax
4. Blockchain Technology and Intellectual Property
   1. Review how blockchain technology can impact intellectual property
   2. Patents:
      * Review basic types of patents, processes and rights
      * Review key cases like *Alice* and *Bilski*
   3. Copyrights and Trademarks:
      * Distinguish from patents, the filings and the rights
      * Discuss open-source licenses and how they work
   4. Trade Secrets:
      * Is there a role for trade secrets in Blockchain technology?
5. Blockchain Technology and the Legal Industry
6. How blockchain disrupts the legal industry
7. Providing legal services to clients in the blockchain industry
   1. Benefits to clients
   2. Benefits to the legal practitioner
8. Real life legal issues for blockchain companies
9. Blockchain Legal Considerations for Blockchain Solutions
   1. Explain the kind of blockchain legal services professionals can provide to clients
      * Regulatory compliance and filings
      * Creating a blockchain legal structure
      * Blockchain intellectual property analysis and filings
      * Litigation services
10. Review of Course Objectives

1. SEC v. Howey Co., 328 U.S. 293 (1946). [↑](#endnote-ref-1)