UNIVERSITY *of* NICOSIA

Session 2

Classifying the Law

BLOC 513: Law and Regulation in Blockchain

Session objectives

- To provide students with a thorough understanding of how Law is classified.

- To identify and taxonomize the major legal issues associated with the crypto business.

  - In particular, to understand:

    - The concept of Public and Private Law;
    - The concept of Criminal and Civil Law;
    - The Public law interest on crypto industry;
    - The Private law relationships developed throughout crypto business;
    - The criminal and civil law cases often emerge in crypto space.

Session outline

1. Public Law and Private Law

2. Criminal Law and Civil Law

3. The regulatory landscape of crypto space

4. Required reading

5. Further reading

Public Law and Private Law

Public Law and Private Law

Public law: This concerns laws that regulate the relationship between the state and its citizens, and between public authorities themselves (this would include legal persons, as well as natural persons).

Examples: Criminal law (the state prosecutes and punishes citizens who commit crimes); human rights (persons may initiate proceedings against the state if their human rights have been breached); administrative law (disputes between persons and government agencies).

Private law: This concerns laws that regulate the relationship between persons.

Examples: Contract law (laws governing the rights and obligations of contracting parties); company law (laws governing the rights and responsibilities of directors, shareholders etc.); property law (laws governing the acquisition, sharing and protection rights of individuals over real and personal property).

Sovereignty / Democracy / Legislative Competence / Public Interest / Freedom of Contracts

Criminal Law and Civil Law

Criminal Law and Civil Law

In general terms:

	Criminal law	**Civil Law**
Purpose of the Law	To preserve social order by punishing wrongdoers and deterring other from committing crimes	To compensate a person who has suffered loss or injury due to the acts of another
Parties in the case	State vs. Defendant	Claimant vs. Defendant
Outcome of the case	Not guilty or guilty (and imprisonment, fine, etc.)	If claimant wins, he/she is awarded a remedy
Burden/standard of proof	Beyond a reasonable doubt	Balance of probabilities
Examples	Murder, Theft, Money laundering, Tax evasion, Securities fraud	Breach of contract, negligence, libel, property damage

Types of Law

There are varied types of law:

Private Law: Governs the relationship between individuals and does not involve the State.

Public Law: Governs the interaction of an individual and the State.

**Civil Law:** e.g. *Smith v. Jones* – a claimant sues (brings a claim against a defendant).

Level of proof = 'balance of probabilities'.

Such claims are referred to as tort law.

Criminal Law: e.g. *R. v. Jones* – The cases are brought by the State in the name of the Crown (Regina = queen). The prosecutor prosecutes a defendant (the accused). Level of proof = 'beyond reasonable doubt'. There is a possibility for 'private prosecution'.

NOTE: The same facts may result in two different cases e.g. a criminal case (reckless driving – injuring a pedestrian); and a civil case (tort of negligence).

Criminal Law vs. Civil Law
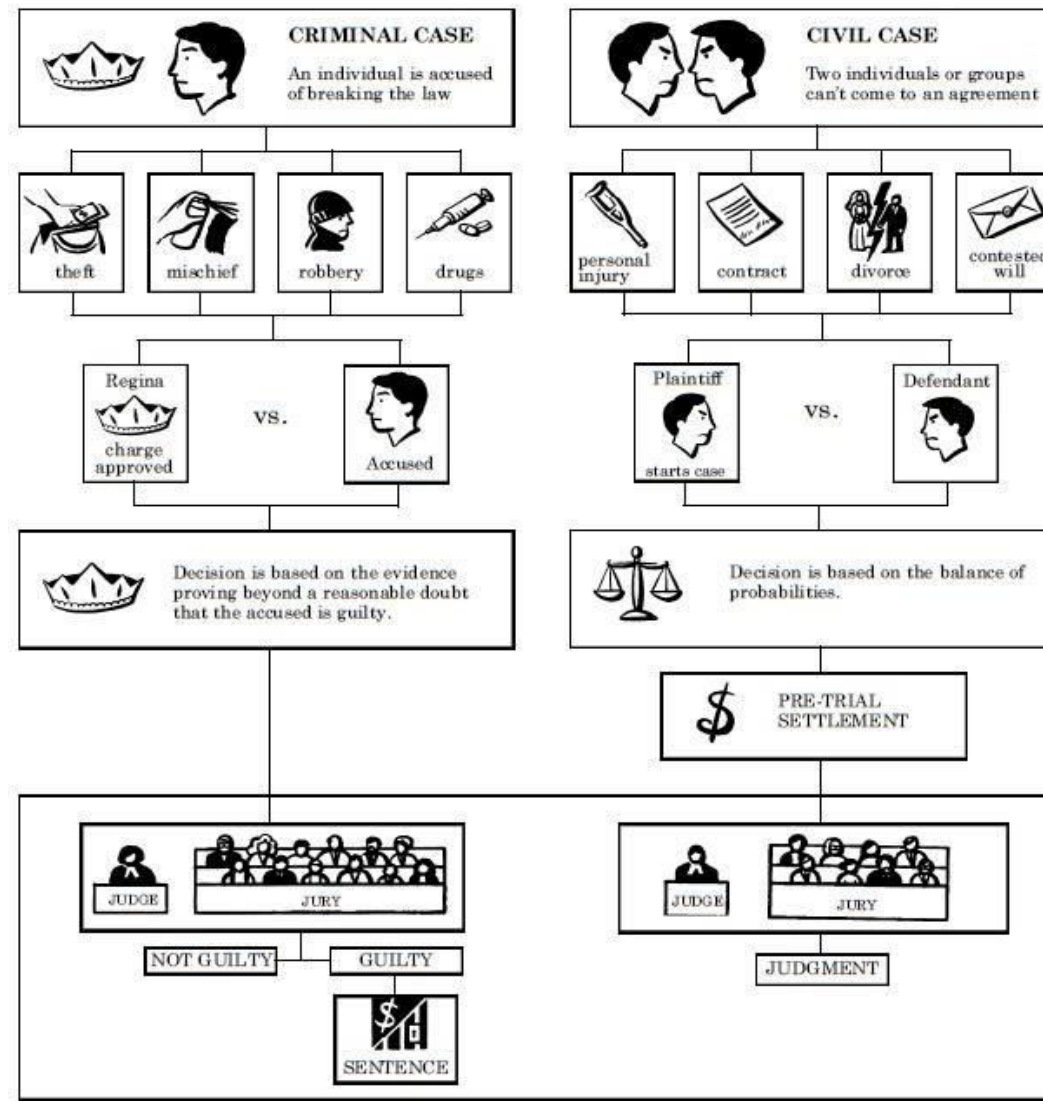
Tort - Outline

What is a tort?

Under civil law an injured party, referred to as the "plaintiff", can claim damages for an injury.
Compensation can be sought from the "defendant" for damages incurred (i.e. harm to property, health, or well-being).

Tort		
Categories	**Elements**	**Types**
Torts fall into three general categories: 1. intentional torts (e.g. intentionally hitting a person); 2. negligent torts (e.g. causing an accident by failing to obey traffic rules); and 3. strict liability torts (e.g. liability for making and selling defective products).	There are four main elements to tort law: 1. duty, 2. breach of duty, 3. causation, 4. and injury.	There are three types of tort: 1. international torts; 2. negligence; 3. strict Liability.

Intentional Torts

- An intentional tort occurs if an individual or entity intentionally engages in conduct that causes injury or damage to another. E.g. hitting a person in a fight is an intentional act that would fall under the tort of battery.

- Accidentally hitting a person is not considered "intentional" if there was no intent to strike the individual. However, an inadvertent act may be considered to be a negligent act if the person is injured.

- There are important differences between an intentional tort and a criminal claim. A crime can be defined as a wrongful act that injures or interferes with the interests of society.

- Intentional torts are wrongful acts that injure or interfere with an individual's well-being or property.

- The government files criminal charges that can result in a fine or jail sentence. Tort charges are filed by a plaintiff seeking monetary compensation for damages that the defendant must pay if they lose.

- Sometimes a wrongful act may be both a criminal and tort case.

Intentional Tort Examples	
• Assault • Battery • False imprisonment • Conversion	• Intentional infliction of emotional distress • Fraud/deceit • Trespass (to land and property) • Defamation

Tort – Negligence

- Negligence claims are the most prevalent form of tort.

- We are each expected to follow a specific code of conduct and the public has a legal duty to act in ways that reduce the risk of harm to others.

- It is deemed negligence if we fail to adhere to those standards.

- Unlike intentional torts, a deliberate act is not involved in a negligence case and the claim is founded on the individual or entity failing in their duty of care.

- Common examples of negligence torts are cases of slip and fall – when a property owner fails to act as a reasonable person and that results in harm to the visitor or customer.

Negligence Examples	
• Slip and fall accidents • Car accidents • Truck accidents • Motorcycle accidents	• Pedestrian accidents • Bicycle accidents • Medical malpractice

Tort – Strict Liability

- Strict, or "absolute," liability torts are cases where the wrongdoer can be held responsible for an injury without proof of negligence or direct fault.

- The key issue is whether the relevant action resulted in the eventual injury of another person.

- Defective product cases are a prime example of instances where liability exists despite the lack of any intention to cause harm.

- A strict liability claim can be proven if the injured consumer can establish that their injuries were directly caused by the product in question. There is no need to consider intention in relation to the claim as 'intention' is not a factor in such cases.

Strict Liability Examples
- Defective products (product liability)   - Animal attacks (dog bite lawsuits)   - Abnormally dangerous activities

The Regulatory Landscape of Crypto Space

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**Ricardo de Caria, "The Push for non-regulation or the replacement of the Law with computer code"**

"*The blockchain tends to be in tension with certain cornerstones of today's legal systems. […] While the law has increasingly become the product of an act of will by the legislator […] affirming the state's monopoly on the production and application of the law, [t]he blockchain challenges the public monopoly on both production and the application of the law.*"

- *Tendency of the blockchain to push in the direction of* **self-regulation or deregulation, or even the de-jurification of society,** *within a framework that envisages replacing the law with computer code…*

- ***Smart contracts*** *tend to be a possible threat to the foundations of sovereignty insofar as they seem to allow the* **orderly conduct of contractual relations outside the circuit of state legality;** *legal certainty, immutability, even online dispute resolution systems, while traditionally have mostly remained the prerogative of the public authorities, are now reachable though a 'self-execution/automated mode'.*

Blockchain and sovereignty: A relationship of alternativity; configured in terms of conflict.

The blockchain, with its various applications, appears to be the bearer of a potential challenge for sovereignty.

The Regulatory Landscape of Crypto Space
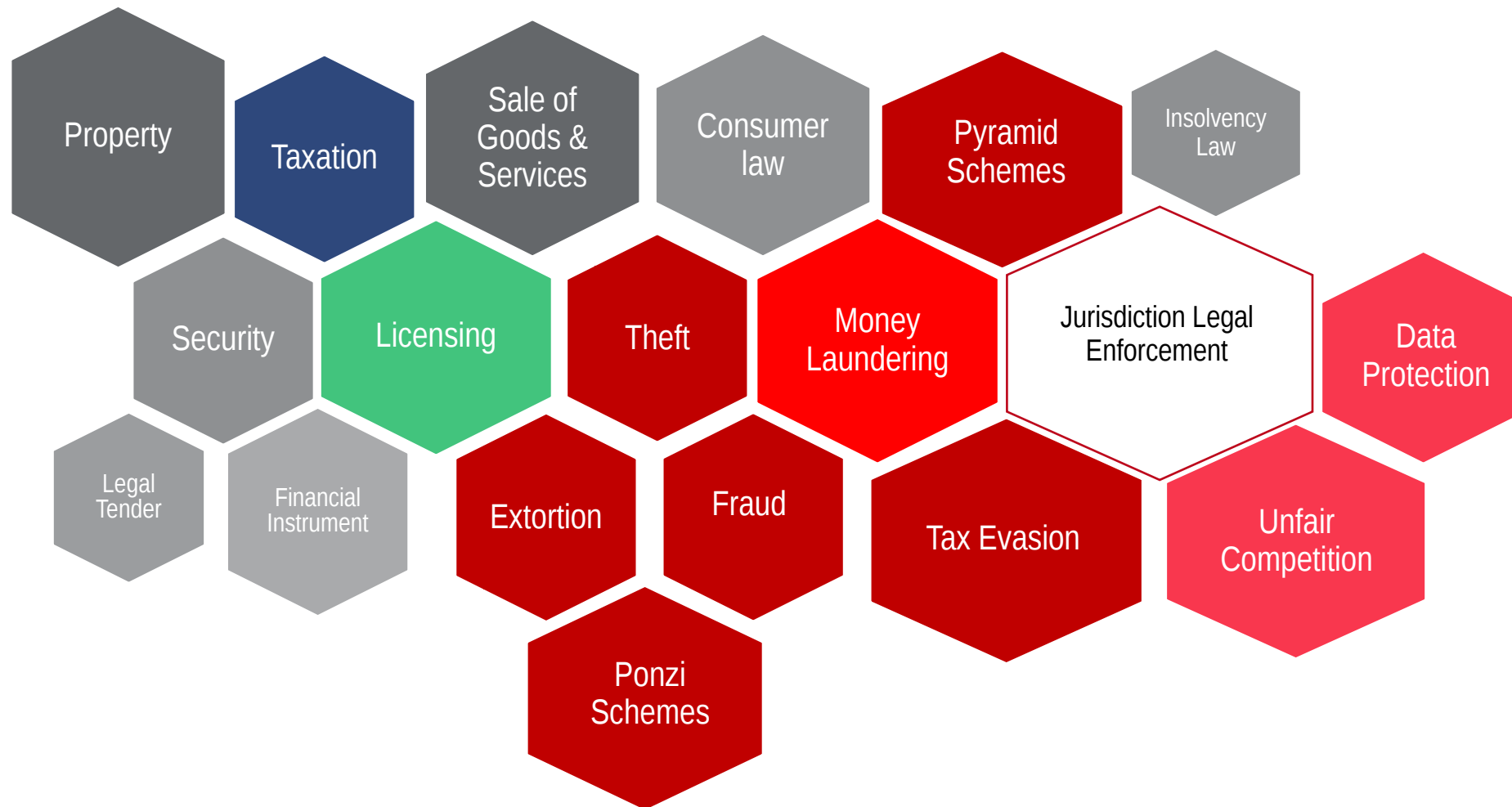
Required Reading

Required Reading

Ricardo de Caria, "Blockchain and sovereignty" (pp. 41-60), in Oreste Pollicino and Giovanni De Gregorio (eds), **Blockchain and Public Law: Global Challenges in the Era of Decentralization** (2021)

Lorenzo Cotula, **Reconsidering Sovereignty, Ownership and Consent in Natural Resource Contracts: From Concepts to Practice** (2018)

Olha Cherednychenko, **Rediscovering the public/private divide in EU private law** (2019)

Konstantinos Stylianou, **What can the first blockchain antitrust case teach us about the crypto-economy?** (2019)

Legal Theory Lexicon 093: Common Law

Further reading

Further reading

Lloyd Musolf and Harold Seidman, **The Blurred Boundaries of Public Administration** (1980)

Bedrettin Gurcan, **Jurisdiction on the Blockchain** (2020)

Wulf Kaal and Craig Calcaterra, **Crypto Transaction Dispute Resolution** (2018)

David Fox and Sarah Green, **Cryptocurrencies in Public and Private Law** (2019), Chapters 5 & 6

Questions?

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