Blockchain & Legal Innovation I

Readings List

# Topic 2 - Blockchains

## General

### Chapter 2: Blockchain and Law: The Rule of Code by De Filippi & Wright

### 2nd Global Enterprise Blockchain Benchmarking Study MICHEL RAUCHS, APOLLINE BLANDIN, KEITH BEAR, STEPHEN MCKEON, Cambridge Centre for Alternative Finance, 2019 (included in folder)

## Blockchain Whitepapers (all included in reading folder):

### Bitcoin;

### Ethereum;

### XRPL; and

### Libra,

## Helpful Videos

### How does Bitcoin Work: https://www.youtube.com/watch?v=bBC-nXj3Ng4

### Different Consensus Algorithms: https://www.youtube.com/watch?v=ah94PuwR1DI

### XRPL Consensus vs Proof of Work https://www.youtube.com/watch?v=RZqsUaDBgTY

## Some Legal Issues

### Broad Australian Perspective:

#### The Distributed Liability of Distributed Ledgers: Legal Risks of Blockchain, DIRK A. ZETZSCHE, ROSS P. BUCKLEY AND DOUGLAS W. ARNER [2017] *UNSWLRS* 52 http://www.ssrn.com/link/UNSW-LEG.html

### Fiduciary Duties:

#### American perspective: https://stanford-jblp.pubpub.org/pub/blockchain-dev-fiduciary-duty

#### WALCH, A (2018) "In Code(rs) We Trust: Software Developers as Fiduciaries in Public Blockchains" (https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3203198)

### Privacy:

#### Michèle Finck **Blockchains and Data Protection in the European Union** Max Planck Institute for Innovation and Competition Research Paper No. 18-01 https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3080322

## Some Examples (for discussion in tutorial):

### Bitmain Law Suit: Rival chain BSV sues BCH chain mining pools and miner manufacturers over outcome of BCH hash war (copy included in reading folder)

### Tone Vays Bet - miner manually adds low value transaction so bitcoin influencer can win $10,000 bet: https://insights.santiment.net/read/tone-vays-vs-roger-ver--the-%245-transfer-bet-447

### BCH Mining Tax: BCH Miners propose a soft fork tax on block rewards to fund chain development and threatens to use hashing power to orphan blocks of miners who do not comply: https://cointelegraph.com/news/major-bitcoin-cash-pools-force-125-mining-tax-on-community

# Key Themes

## Blockchains and smart contracts do not avoid legal liabilities by having no trusted third party in the middle.

## Having no trusted third party can, in fact, expand potential liabilities because:

### blockchain have come be seen as things of enormous value;

### Courts may be willing to drawn upon equitable and tortious concepts to provide remedies to protect that value;

### parties may have no contractual nexus that would otherwise allows for adjusting obligations, indemnities and limitations of liability;

## The legal status of participants in a blockchain are unclear:

### is its a partnership, unincorporated association, unincorporated joint venture?

### is it a "common enterprise" or "venture" with the expanded terms used in many money and securities legislation?

### is there an arrangement contract or understanding between participants that while not a formal contract may be enough for the purposes of defining a cartel, anti-competitive behaviour, or money services businesses?

## The legal issues are further muddied by the different nature of blockchains:

### Open vs permissioned: permissioned systems clearly have some kind of trusted third party or membership regime;

### Proof of work leads to miner concentration - does this enliven anti-trust or anti-monopoly power statutes? What about miners in sanctioned countries?

### Proof of stake sounds suspiciously like a security or managed investment

### For all systems do cyber security laws apply to attempts to "fork" or double spend the chain?