Courses, and Horses

[As of 07/14/18; from Blockchainforlawstudents.com]

Professor Walter A. Effross
American University Washington College of Law

What courses should law students interested in blockchain and cryptocurrency consider taking?

Two horse-related stories guide my recommendations.

(1) In a 1996 law review article, Judge Frank H. Easterbrook of the Seventh Circuit Court of Appeals dismissed as overspecialized the topic that the University of Chicago Law School had invited him to address: "Property in Cyberspace." Judge Easterbrook noted that a former dean of the school had been

> proud that [it] did not offer a course in "The Law of the Horse." . . . His point . . . was that "Law and . . ." courses should be limited to subjects that could illuminate the entire law [instead of being] suited to dilettantes. . . .
>
> [In addition, o]nly by putting the law of the horse in the context of [traditional courses'] broader rules about commercial endeavors could one really understand the law about horses.

Far from being a subject for "dilettantes," blockchain could deserve its own course because of its technical novelty and complexity, the range of its applications, and the wide variety of its legal implications.

Yet for such a course to most effectively "illuminate the entire law," students must already be familiar with the "broader rules about commercial endeavors" presented in fundamental curricular offerings. Blockchain-oriented students could discover new dimensions of:

● Business Associations (and possibly follow-up courses in Corporate Governance and/or Corporate Compliance)- to analyze the responsibility of boards of directors to respond appropriately to blockchain's potential disruptions in, and opportunities for, their companies' business models and operations; to explore blockchain-enhanced procedures for shareholder voting, corporate record-keeping, and compliance; and to analyze possible new forms of business associations for, and the technology's role in the governance of, "decentralized autonomous organizations" (DAOs);

● Corporate Bankruptcy- to anticipate, and protect the interests of, clients considering reorganization or liquidation, or concerned about the potential reorganization or liquidation of a trading partner; and to clarify the treatment of cryptocurrency, tokens, and other crypto-assets in such circumstances;

● Securities Regulation- to understand whether cryptocurrency and tokens qualify as, and can be regulated as, securities; and if so, how to apply these regulations to initial coin offerings (ICOs); and

● Banking/Financial Law and Regulation- to examine the regulation of cryptocurrency sites as money transmitters, and in general the application to them of Know Your Customer (KYC), Anti Money Laundering (AML) and Counterterrorism Financing (CTF) regulations.

Twenty-two years after Judge Easterbrook's remarks, cyber-issues permeate today's law school curriculum, including the standard first-year courses. By 2040 (if not much sooner), the same could well be true of blockchain-related issues.

(2) In an old joke, an early 20th-century student asks a teacher to explain the telegraph. Well, says the teacher (who doesn't really know very much about technology), think of the telegraph wires as the body of a very, very long horse. When you send a message from here, it's like you're pulling the horse's tail: the horse's head will whinny way over there, where the recipient is.

I think I understand what you mean, says the student, but what about the new thing people are calling a wireless telegraph, or radio? How does *that* work?

After a brief pause, the teacher says, OK, that's pretty much the same. . . except without the horse.

Numerous authors on blockchain and cryptocurrency have emphasized the danger of such facile/imploding analogies, especially analogies to traditional ledger books, metal coins, and paper money. To fully understand the legal ramifications and regulations of these technologies, students should study the current laws and practices of:

● Negotiable Instruments (also known as Payment Systems)- to understand how these documents can be generated, indorsed, accepted, and transferred among parties, and how the liability of participants arises and can be extinguished; and

● Secured Transactions- to analyze the creation, perfection, priorities, and recording of security interests.