
CONTENTS

Preface	xxi
Acknowledgments	xxv
Chapter 1 Introduction to Digital Asset Law	1
A. Introduction	1
B. Bitcoin: The First Digital Asset	5
Satoshi Nakamoto, Bitcoin: A Peer-to-Peer Electronic Cash System	7
Jose Alvarez, Who Is Satoshi Nakamoto?	9
John Oliver, Cryptocurrencies	11
Arthur Piper, Blockchain and Smart Contracts	12
Polly Botsford, Everywhere in Chains	13
Paul Vigora, Most Bitcoin Trading Faked by Unregulated Exchanges, Study Finds	16
Notes	17
C. Early Law Enforcement Issues with Digital Assets	17
Stuart Dredge, What Is Tor? A Beginner's Guide to the Privacy Tool	17
Notes	19
V. Gerard Comizio, Virtual Currencies: Growing Regulatory Framework and Challenges in the Emerging Fintech Ecosystem	19
Questions and Notes	24
Financial Action Task Force, Press Release	25
Questions and Notes	26
Chapter 2 Digital Assets and the Money Transmission and Anti-Money Laundering Laws	29
A. Introduction: The Money Services Business	29
Reengineering Nonbank Supervision: Overview of Money Services Business	29
Notes	31
	xi

xii	Contents
Edward Robinson and Julie Verhage, Fintech	33
Questions and Notes	33
B. Federal Regulation of Digital Assets as MSBs	35
FinCEN Ruling 2003-8: Definition of Money Transmitter (Merchant Payment Processor)	35
1. FinCEN and Digital Currency Guidance Regarding MSBs	36
Department of the Treasury Financial Crimes Enforcement Network, Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies	36
Questions and Notes	41
2. FinCEN and Anti-Money Laundering Laws	43
V. Gerard Comizio, International Banking Law	43
Notes	46
<i>United States v. Campos</i>	46
Department of Justice, Press Release	47
Notes	48
<i>In the Matter of Eric Powers</i>	49
Questions and Notes	53
Department of the Treasury Financial Crimes Enforcement Network, Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies	55
Notes	57
C. State Money Transmission Laws	58
Marco Santori, Bitcoin Law: Money Transmission on the State Level in the U.S.	59
Questions and Notes	60
Lee A. Schneider, A "Sensible" Token Classification System	62
Questions and Notes	64
Chapter Review Questions	65
Chapter 3 Securities Regulation and Digital Assets: Tokens and Initial Coin Offerings	67
A. Introduction: Tokens and Initial Coin Offerings	67
Philipp Maume and Mathias Fromberger, Regulation of Initial Coin Offerings: Reconciling U.S. and E.U. Securities Law	68
B. The Application of the Federal Securities Laws to ICOs	73
Jay B. Sykes, Securities Regulation and Initial Coin Offerings: A Legal Primer	73
<i>Securities and Exchange Commission v. W. J. Howey Co.</i>	74
Questions and Notes	77

Contents	xiii
<i>United Housing Foundation, Inc. v. Forman</i>	78
Questions and Notes	81
C. ICOs and SEC Enforcement Under the 1933 Act	81
Securities and Exchange Commission, Report of Investigation Pursuant to Section 21 (a) of the Securities Exchange Act of 1934: The DAO	82
Questions and Notes	89
Securities and Exchange Commission, Office of Investor Education and Advocacy, Investor Bulletin: Initial Coin Offerings	91
Notes	93
<i>In the Matter of Munchee Inc., Cease and Desist Order</i>	93
Notes	98
<i>Securities and Exchange Commission v. Ripple Labs, Inc.</i>	99
Questions and Notes	102
D. Private Placements Under the 1933 Act	105
1. Regulation D	105
2. Regulation A	106
3. Regulation Crowdfunding	106
Chapter Review Questions	107
Chapter 4 Broker-Dealer Rules, Trading Platforms, and Anti-Manipulation Rules Under the Securities Exchange Act of 1934	109
A. Introduction: Broker-Dealer and Exchange Rules and Their Application to Digital Asset Activities	109
Securities and Exchange Commission, Guide to Broker-Dealer Registration	110
Securities and Exchange Commission, Report of Investigation Pursuant to Section 21 (A) of the Securities Exchange Act of 1934: The DAO	112
<i>In the Matter of BTC Trading Corp. and Ethan Burnside</i>	113
Questions and Notes	117
Securities and Exchange Commission, Divisions of Enforcement and Trading and Markets, Statement on Potentially Unlawful Online Platforms for Trading Digital Assets	119
<i>Securities and Exchange Commission v. Jon E. Montroll and BitFunder</i>	121
Questions and Notes	124
Securities and Exchange Commission, An Incremental Step Along the Journey: Markets' Frequently Asked Questions Relating to Crypto Asset Activities and Distributed Ledger Technologies	127

xiv	Contents
Notes	128
B. Anti-Manipulation Rules and Digital Assets	130
<i>In the Matter of Bitcoin Investment Trust and SecondMarket, Inc., Final Cease and Desist Order</i>	130
Notes	133
Bruce Czachor, A Guide to Regulation M: Regulating Marketing Activity During a Public Offering	134
Notes	135
Chapter Review Questions	135
Chapter 5 Digital Assets and Federal Commodities Regulation: The CFTC and the Commodity Exchange Act	137
A. Introduction	137
Joseph Santos, A History of Futures Trading in the United States	138
Notes	140
Joseph Santos, A History of Futures Trading in the United States	141
B. Virtual Currency and Derivatives Regulation	144
<i>In the Matter of Coinflip, Inc. d/b/a Derivabit and Francisco Riordan</i>	144
Notes	146
<i>In the Matter of BFXNA Inc. d/b/a Bitfinex, Final Order</i>	147
C. “Actual Delivery” Under the CFTC’s Rules	150
Commodity Futures Trading Commission, Retail Commodity Transactions Involving Virtual Currency	150
CFTC Statement on Self-Certification of Bitcoin Products by CME, CFE and Cantor Exchange	152
Questions and Notes	153
Commodity Futures Trading Commission, 17 CFR Chapter I	156
D. The <i>McDonnell</i> Case: Court Holds Digital Assets Are Commodities	157
<i>CFTC v. Patrick McDonnell and CabbageTech Corp. d/b/a Coin Drop Markets</i>	157
Questions and Notes	164
Commodity Futures Trading Commission, Release Number 9145-25	167
Chapter Review Questions	167
Chapter 6 Digital Assets and the Uniform Commercial Code	169
A. Introduction	169
Kristen Johnson et al., (Im)Perfect Regulation: Virtual Currency and Other Digital Assets as Collateral	170

Contents	xv
Questions and Notes	174
<i>United States v. Faiella</i>	175
<i>United States v. 50.44 Bitcoins</i>	178
Notes	179
<i>United States v. Murgio</i>	180
Notes	183
<i>SEC v. Trendon T. Shavers and Bitcoin Savings and Trust</i>	184
Notes	185
B. Article 9 of the UCC and Virtual Currency as Collateral	185
Kristen Johnson et al., (Im)Perfect Regulation: Virtual Currency and Other Digital Assets as Collateral	186
Questions and Notes	192
C. Article 8 of the UCC	193
Timothy Bierer, Hashing It Out: Problems and Solutions Concerning Cryptocurrency Used as Article 9 Collateral	193
Questions and Notes	194
Andrea Tinianow, A Split Emerges in Blockchain Law: Wyoming’s Approach Versus the Supplemental Act	195
D. New Article 12 of the UCC	196
Uniform Law Commission, Summary of 2022 Amendments to the Uniform Commercial Code—Emerging Technologies	196
Notes	198
Chapter Review Questions	200
Chapter 7 Digital Asset Trading and Bank “Fintech” Charters	203
A. Introduction	203
B. The New York Regulatory Framework	203
New York Department of Financial Services, NY DFS Releases Proposed BitLicense Regulator Framework for Virtual Currency Firms	203
V. Gerard Comizio, Virtual Currencies: Growing Regulatory Framework and Challenges in the Emerging Fintech Ecosystem	204
Notes	207
V. Gerard Comizio, Virtual Currencies: Growing Regulatory Framework and Challenges in the Emerging Fintech Ecosystem	207
C. The Federal-State Fight Over the Fintech Charter	209
Jay B. Sykes, Federal Preemption in the Dual Banking System	209
<i>Vullo v. Office of the Comptroller of the Currency</i>	212

<i>Lacewell v. Office of the Comptroller of the Currency, Brief for Defendants-Appellants (OCC)</i>	219
<i>Lacewell v. Office of the Comptroller of the Currency, Brief for Appellee (NYDFS)</i>	222
<i>Lacewell v. Office of Comptroller of the Currency</i>	225
Questions and Notes	230
D. The OCC Revisits the Digital Asset Fintech Charter	234
Office of the Comptroller of the Currency, Re: Applications to Convert Fidelity Digital Asset Services, LLC, New York, New York to an Uninsured National Trust Bank, Fidelity Digital Assets, National Association, New York, New York	234
Questions and Notes	236
Chapter Review Questions	237
Chapter 8 Digital Asset Funds as Regulated Investment Companies Under the 1940 Act	239
A. Introduction	239
B. The Investment Company Act of 1940	240
Notes	242
Eddie Mitchell, Bitcoin ETFs: What They Are and How to Invest	243
Questions and Notes	244
<i>In the Matter of Crypto Asset Management, LP</i>	245
Questions and Notes	248
C. The SEC Bitcoin ETF Saga	250
Securities and Exchange Commission, Division of Investment Management, SEC Staff Letter: Engaging on Fund Innovation and Cryptocurrency-Related Holdings	251
Questions and Notes	254
Securities and Exchange Commission, Release No. 34-83723	255
Notes	259
Dissenting Statement of Commissioner Hester M. Peirce in Response to SEC Rel. No. 34-83723	259
Questions and Notes	262
Dissenting Statement of Commissioner Hester M. Peirce in Response to SEC Rel. No. 34-88284	263
D. SEC Opens the Door to the Bitcoin ETF Industry	267
<i>Grayscale Investments, LLC v. Securities and Exchange Commission</i>	268
Chair Gary Gensler, U.S. Securities and Exchange Commission Statement on the Approval of Spot Bitcoin Exchange-Traded Products	270

Contents	xvii
Questions and Notes	272
The White House Executive Order, Democratizing Access to Alternative Assets for 401(k) Investors	273
U.S. Department of Labor Employee Benefits Security Administration, 401(k) Plan Investments in Cryptocurrencies	274
Questions and Notes	275
Chapter Review Questions	276
Chapter 9 Digital Assets: Constitutional Issues	279
A. Introduction	279
B. The First Amendment	279
Andrew Balthazor, Bitcoin Will Find No First Amendment Refuge	279
<i>Bernstein v. U.S. Department of State</i>	281
Justin S. Wales and Richard S. Ovelmen, Bitcoin Is Speech: Notes Toward Developing the Conceptual Contours of Its Protection Under the First Amendment	285
Kevin Helms, Google, Facebook, Twitter Face Class-Action Lawsuit for Banning Crypto Ads	289
Questions and Notes	290
C. The Fourth Amendment	291
<i>California Bankers Association v. Shultz</i>	291
Questions and Notes	297
<i>Carpenter v. United States</i>	298
Questions and Notes	300
<i>United States v. Miller</i>	300
Questions and Notes	304
<i>United States v. Gratkowski</i>	304
Questions and Notes	309
Robert A. Schwinger, A Little Less Privacy: Cryptocurrency Transactions Under the Fourth Amendment	310
<i>Joseph Van Loon et al. v. Department of the Treasury</i>	311
Questions and Notes	314
Chapter Review Questions	314
Chapter 10 Digital Assets: International Regulation	317
A. International Legal and Regulatory Developments	317
B. The Basel Committee on Banking Supervision: Virtual Currency Regulation Considerations	318

xviii	Contents
1. The Basel Committee’s Objectives	319
Notes	320
Basel Committee on Banking Supervision, Bank for Intentional Settlements, Disclosure of Cryptoasset Exposures	322
Questions and Notes	323
C. The European Union: The European Banking Authority	324
European Banking Authority, EBA Opinion on Virtual Currencies	325
Questions and Notes	326
European Banking Authority, Report with Advice for the European Commission on Application of EU Law to Crypto-Assets	327
Questions and Notes	329
Questions and Notes	334
V. Gerard Comizio, Virtual Currencies: Growing Regulatory Framework and Challenges in the Emerging Fintech Ecosystem	334
Notes	340
Chapter Review Questions	341
Chapter 11 Digital Assets and Federal Tax Law	343
A. Introduction	343
John K. McNulty and Daniel J. Lathrope, Traditional Taxation of Property Sales and Currency Transactions	344
Internal Revenue Service, Character of Exchange Gain or Loss on Currency Transactions	345
B. Federal Taxation of Virtual Currency	346
1. Virtual Currency’s Tax Status Under the Internal Revenue Service	346
Scott A. Wiseman, Property or Currency? The Tax Dilemma Behind Bitcoin	346
Internal Revenue Service, IRS Notice 2014-21	347
Jose Pagliery, New IRS Rules Make Using Bitcoins a Fiasco	350
2. IRS Enforcement	350
Internal Revenue Service, IRS Has Begun Sending Letters to Virtual Currency Owners Advising Them to Pay Back Taxes, File Amended Returns; Part of Agency’s Larger Efforts	351
<i>United States v. Coinbase Inc.</i>	352
Questions and Notes	357
C. Third Party Information Reporting	360
D. Staking Digital Assets—The IRS Safe Harbor for ETFs	362
Internal Revenue Service, IRS Rev. Proc. 2025-31	362
Notes	364
Chapter Review Questions	364

Contents	xix
Chapter 12 Crypto Winter and Beyond: Evolving Digital Asset Market and Regulation	367
A. Introduction	367
B. Crypto Winter of 2022	368
Julian Mark and Gerrit De Vynck, “Crypto Winter” Has Come. And it’s Looking Like an Ice Age	369
Notes	369
John Jenkins, Risk Factors: Coinbase Pummeled for Required SAB 121 Disclosure	370
Notes	371
C. Crypto Winter Government Prosecutions and Class Action Lawsuits	371
U.S. Attorney’s Office, Southern District of New York, Founder of Celsius Sentenced To 12 Years for Fraud and Market Manipulation: Alexander Mashinsky Deceived Customers About Celsius’s Financial Stability and Rigged the Price of Celsius’s Crypto Token, Leading to Billions in Losses	371
<i>In re Celsius Network LLC, et al.</i>	373
Questions and Notes	376
D. Evolving Crypto Regulation Today	378
Office of Comptroller of the Currency, Clarification of Bank Authority Regarding Crypto-Asset Custody Services	378
<i>United States of America v. Samuel Bankman-Fried</i>	379
U.S. Department of Justice Office of Public Affairs, Samuel Bankman-Fried Sentenced to 25 Years for His Orchestration of Multiple Fraudulent Schemes	383
Questions and Notes	384
E. Regulation Post-Crypto Winter and Beyond	384
Board of Governors of the Federal Reserve System, Joint Statement on Crypto-Asset Risks to Banking Organizations	384
Notes	386
Board of Governors of the Federal Reserve System, Federal Reserve Board Announces the Withdrawal of Guidance for Banks Related to Their Crypto-Asset and Dollar Token Activities and Related Changes to Its Expectations for These Activities	388
F. Crypto Winter and Celebrity Crypto Endorsers	389
<i>In re FTX Cryptocurrency Exchange Collapse Litigation</i>	389
Notes	391
<i>In the Matter of Kimberly Kardashian</i>	392
Securities and Exchange Commission, SEC Charges Crypto Entrepreneur Justin Sun and His Companies for Fraud and Other Securities Law Violations	395

Securities and Exchange Commission, Office of Investor Education and Advocacy, Investor Alert: Celebrity Endorsements	396
Securities and Exchange Commission, Division of Enforcement and Office of Compliance Inspections and Examinations, SEC Statement Urging Caution Around Celebrity Backed ICOs	397
Questions and Notes	398
G. New Digital Law, Regulation, and Policies—Looking Ahead	398
H. Stablecoin and the GENIUS Act	401
Jack Spira and David Wessell, What Are Stablecoins and How Are They Regulated?	401
1. Stablecoin Payments Infrastructure for Modern Finance	402
Matt Higginson and Gary Spanz, The Stable Door Opens: How Tokenized Cash Enables Next-Gen Payments	402
Questions and Notes	403
2. The GENIUS Act	403
Notes	404
Department of the Treasury, Advance Notice of Proposed Rulemaking	404
V. Gerard Comizio, Guarding Against the Coming Crypto Market Implosion: Balancing Innovation and Oversight in a High-Stakes Digital Economy	406
Questions and Notes	408
Chapter Review Questions	408
Table of Cases and Regulatory Orders and Issuances	411
Index	417