Lawyered – Episode 88
Cryptocurrency Law ft. Sohaib Mohammad

[00:03] HUSEIN: This is Episode 88 of Lawyered. I'm Husein Panju. And on this week's episode we're chatting about the rules involving Bitcoin, Ethereum, and other digital assets featuring cryptocurrency lawyer Sohaib Mohammad. First up, we'll chat about a new high-profile case known as Cicada 137 and Medjedovic. And defense of Code is Law. The defendant in this matter will likely be arguing that program code constitutes the law and then exploiting vulnerabilities in the code is considered lawful. And the court's criminal defense will shape the way that our justice system addresses crypto, and technology issues.

[00:42] We'll also speak about a new line of cases in which our courts have awarded Mareva injunctions that have frozen crypto assets. These tools are used to prevent defendants of disposing of their assets before trial and introduction in the crypto space is triggering several novel and important questions. Later, we'll discuss new requirements for crypto asset trading platforms that are designed to enhance investor protection with a more tightly regulated framework. And in our Ask-Me-Anything segment, we will relay the questions submitted by our listeners about topics including volatility risks, industry expansion, and just how a defendant can be served by an NFT AirDrop. All that and a lot more is coming up in just a bit. This is Lawyered.

[Music Break]

[01:33] HUSEIN: Hey, everybody, welcome to the podcast. And thanks for joining us for another installment of Lawyered. We have a great episode for you today. I want to first tell you about what happened on our previous episode. That was Episode 87 about the area of Public Health Law. This is one of our most popular episodes of the season—perhaps unsurprisingly so. We had our guests Jess Szabo, who is an expert in this area walking us through some of the most high profile and I would say controversial areas in Public Health Law. And when we say Public Health Law, we distinguish this between Health Law, and that this was more about the health care system and laws related to how the system operates, as opposed to the obligations that are owed by medical professionals.

[02:23] So, we spoke about three topics there. We spoke about MAID, which is an acronym for Medical Assistance in Dying. There's some new changing regulations about the accessibility of made for individuals who are suffering, "only from a mental illness." We also spoke about a new Ontario bill that would force individuals from hospitals into long term care facilities and there are questions about consent and different stages by which doctors are required to obtain consent for that process.

[02:54] And then we spoke about a bunch of different issues from different Provinces, that all relate to this trend of the privatization of health care or the role of private actors in the public system. Super fascinating content. And a few things really stuck out for me, one is that—more so than other episodes—there was a discussion about not just the law, but ethical implications. As you can imagine, for all the topics I just mentioned, there are serious ethical concerns on both ends of the spectrum, in terms of the practicality of introducing this legislation, and the rules, and how it plays out on the ground. Jess did a great job of walking us through how that plays out. And the intersection between ethics and law, if that's something you're interested in.

[03:38] One of the other things that I really enjoyed about that episode was that there was a really thoughtful discussion of what, Jess had described as a patient-centered approach, which is a health care principle that essentially says that decisions that are made about an individual should involve the individual's input, not just at the time of the implementation, but during the policy development process. Obviously, these controversial topics need collaborative input from all the stakeholders.

[04:05] And it also made me think about a broader standpoint in which whenever we're thinking about laws and policy development, both in the courts and legislature, there is value in having the perspectives of the people who are most impacted at the table. I know that's often not the case. I think that in an episode like this, it really brought to bear the importance of having these standpoints and these views are at the table during the development process. So, take a listen to that. There's a lot to be gleaned from that episode.

[04:36] Today's episode is also going to be a good one, but a very different area of law. We're going to be talking about Cryptocurrency Law, which is an area that a lot of people probably know a little bit about, but few know enough about to really understand what the key issues are. Everyone knows that this currency is going to be very volatile, but in terms of actual rules and regulations, there's a lot happening in this area, because it's very much in its infancy.

[05:03] Some of our loyal listeners will know that we actually did a segment about Bitcoin in Episode 2, a long time ago. And in the years since become a bit more of a refined area, so much so that we have enough content to generate a full episode about it. Not just several episodes, but we have a great lawyer who is going to be our guest for today. He's a lawyer who knows this space very well, very much a cryptocurrency enthusiast, and I mentioned him being a lawyer in that space. And also, he had an important role in shaping a very specific area within this area of law. So, I'm really excited to share this episode with you, I think you are going to get a lot of value from it as well. And without further ado, here is our interview with our guests, Sohaib Mohammed.

[05:46] Sohaib is a lawyer and sole practitioner of the firm called DeLawyer Professional Corporation, based out of Ottawa, Ontario. He's passionate about blockchain technology and focuses his practice on litigation and social services related to cryptocurrency, Non-Fungible Tokens also known as NFTs, and decentralized autonomous organizations, also known as DAO.

As a litigator, Sohaib has acted for the plaintiff known as Palin McCray U, in launching an NFT based class action at the Ontario Superior Court of Justice, which successfully obtained what appears to be the first Canadian court order allowing **[Inaudible 06:23]** to claim via an NFT AirDrop into a defendant's cryptocurrency wallet. And prior to starting his own practice, Sohaib worked briefly as a pharmaceutical patent litigator. So, Sohaib, thanks for joining us on the show today.

[06:36] SOHAIB: Happy to be here. Thank you for having me.

[06:39] HUSEIN: Of course. So, I want to chat with you a little bit about how you ended up in this area. I know crypto is becoming the hot thing right now. But I'm curious, I know you started off doing like IP Pharma work. You had, I think some interest in this area of law, before starting your own practice. Tell us about how this materialize?

[06:56] SOHAIB: Yeah, I was working as a pharmaceutical patent litigator, and on my break, or in the morning, before work or after work, I was getting involved with the cryptocurrency ecosystem. And I began to notice that the space was sort of like the wild-wild-west in the sense that there was very little regulation that was happening.

[07:19] HUSEIN: And I want to ask you, before we get to that, how do you even start getting involved with this ecosystem? Is it just something you just picked up? Or did someone tell you about it? How did this happen?

[07:28] SOHAIB: So, I wrote a paper in second year related to international trade and shipping. There's this document called the Bill of Lading. And those documents are thousands of years old and they have these problems with respect to physical document transfer, because you're only allowed to make one or two copies of those documents and then they can get lost, they can get stolen, they can have all sorts of issues with them.

[07:55] And electronically, there's also problems with respect to their implementation. So, the idea was, maybe this document could be provided in some sort of, like, non-fungible token format, that would allow it to have both physical and electronic properties. So, that's when I started to dive a little bit deeper into cryptocurrency and blockchain. And then eventually, that led me to sort of interacting with that ecosystem and realizing all of the issues that existed within

[08:18] HUSEIN: So, during your lunch break, you started learning more about that. And how did this end up triggering you to start your own firm about this?

[08:27] SOHAIB: A lot of people came to me in 2021, and 2022, seeking legal advice related to NFT sales and I just wasn't able to provide it because I was working at a firm. And I sort of had the opportunity at one point to either extend my contract with my existing firm or to go out on my own. And honestly, the thought for me was that I'm only a year and a half into practice and if I want to do this, I have an opportunity to do this now while this space is still young. And this is what I love. This is what I'm passionate about—not to say I don't love Pharma, but this is what I'm passionate about and I decided to take the plunge and do it.

[09:01] HUSEIN: That's great. And it is as good a time to do it, as it is an emerging area, who can talk a little bit about some of the current issues, but yeah, it seems like everywhere I look, there's new developments in this area, both legal and policy as well.

[09:12] SOHAIB: Yeah, absolutely. There's so much going on. And I would encourage you to fund a wallet with some cryptocurrency just like a couple 100 bucks and just explore this area. And I think you'll be absolutely amazed at what's going on.

[09:27] HUSEIN: Yeah, just make sure you don't lose the password, right?

[09:29] SOHAIB: Yes, exactly.

[09:33] HUSEIN: Cool. So, we got a bunch of topics to speak about in this area. The first case we're going to talk about involves this defense known as Code is Law. An ongoing case involving the alleged theft of $16 million in cryptocurrency, may be the first in Canada to address a new defense, known as the Code is Law defense. And this theory asserts that a program code constitutes the law and that exploiting vulnerabilities in code would is considered lawful. And while we're still awaiting the Ontario Supreme Court's ruling on this specific issue, the end result may speak to the courts willingness to apply traditional legal concepts to novel technology.

[10:12] So, Sohaib, the case we're talking about, the name of it is Cicada 137 LLC and Medjedovic. There is some complexity in this matter involving cryptocurrency and Anton Piller orders. I know this whole thing's been going on for several years. Why don't you just walk us through the most relevant facts that led to this specific matter that we're talking to getting the court?

[10:33] SOHAIB: Absolutely. Cicada 137 LLC is the plaintiff in this case. They operate a decentralized finance protocol known as Indexed Finance. So, the idea behind decentralized finance, also known as DeFi is, hey, we don't need a bank. We don't need a lender. We don't need a mortgage agent or broker. We can carry out transactions ourselves directly by using only smart contract code. Index Finance was offering certain defy related services including lending and borrowing and index funds.

[11:07] Now in the pleadings, they allege that the defendant Mr. Medjedovic, contacted them in order to find out about some sort of programming error or fault within their actual code. And then he went and he manipulated that code in order to make away with $16 million. Mr.

Medjedovic has not specifically responded to that. But from the articles that I've read online, there's another version of events that states that what Mr. Medjedovic did, was he took advantage of an extreme arbitrage opportunity. In either case, they were able to track Mr. Medjedovic because he admitted it on Twitter. Apparently, there was a bunch of emails that he sent and they were able to get this Anton Piller order and serve him with it.

[11:51] HUSEIN: Okay, that's helpful context. So, as you mentioned in the induction, what's relevant in the immediate term is this whole defense is raising about Code is Law. So, per your understanding, what does this defense mean?

[12:04] SOHAIB: Let's say that at the simplest level, there is a cryptocurrency token that I'm sending to you, that cryptocurrency token would… that transaction would be broadcast across the network and different individuals who are providing computing power or mining or something else, in order to verify those transactions would algorithmically group those transactions in a block. And then you'd have a number of blocks that would come together and form something like a chain. So, that's where the term comes from.

[12:31] There is this thought within cryptocurrency circles, that the only thing that matters is the "truth" of the blockchain. That the blockchain is immutable, meaning that transactions on it are irreversible, they're final. That the blockchain is trustless. So, it doesn't discriminate against anybody, anybody can interact with it. And there is no central authority that can go and corrupt the "truth" of this network. So, the idea behind Code is Law, stems from this premise that the truth is whatever the blockchain says the truth is.

[13:05] So, the Medjedovic decision refers to this as the laissez faire contract theory. So, the idea really is, whatever you sign, whatever transaction you signed, that is the contract, whatever code you agree to, that is the contract, and therefore you're bound by the terms of that contract. So, from a consumer protection perspective, it would be like, maybe a thousand-page contract that a consumer doesn't understand, the idea with Code is Law is, "Hey, if you don't understand this contract, you probably shouldn't be signing it."

[13:30] HUSEIN: I know that a lot of commentators see this defenses simply like a cover for fraudsters or bad actors, who are just trying to steal digital assets. I'm curious, what do you think as someone who's closer to this scenario?

[13:43] SOHAIB: So, one of the principles within the cryptocurrency circle is this principle of self-custody. So, if you move your cryptocurrency on to like a centralized exchange, the exchange is responsible for housing your cryptocurrency. Self-custody means you take control over your own cryptocurrency wallet, and whatever you do on the blockchain. And the idea here is if you don't know what you're doing, and if you don't understand this liquidity pool that you're going to put money into, or you don't understand what this link is that you're interacting with, then you should be bound by both the benefits and the consequences.

[14:18] So, I do think that fraudsters will often use Code Is Law as a defense, but I think we do need to consider the opposite side, which is okay, what if Mr. Medjedovic had lost $15 million? What then? Would he have a case against the plaintiffs?

[14:33] HUSEIN: This is not my area of practice. But I have some strong views about this defense being used to like basically undermine, like other Canadian laws that would apply. Like, if someone is stealing something, whether it's in a digital context, or like in a brick and mortar store, like I feel that same principles would apply. But are there other implications about if a Court will accept this Code of law, defense. What does it mean for crypto law, generally?

[15:02] SOHAIB: I think that the ecosystem is already fairly inaccessible to most consumers. So, if this Code is Law defense wants to be implemented, it would be really, really bad for consumer protection, it would essentially be the court saying, "Hey, if you sign a really, really bad contract, too bad."

[15:18] And unfortunately, we've seen a lot of this within the NFT space, where a lot of NFT projects in 2021 promised purchasers of their NFT, these extensive extravagant membership benefits, and they did this on their website, or they did this on Twitter. And then after the purchaser received the NFT, they said, "Oh, too bad, Code is Law, we're not going to give you all of these benefits." So, there is a lot of bad stuff that has been propagated under the guise of Code is Law. And I think it would be bad overall just to accept this as a blanket defense.

[15:47] HUSEIN: And I know, a big theme of this episode is that this era is still very much evolving. But how do you see courts developing the common law in the treatment of ownership of digital assets, whether it's in this Code of Law specific case or broadly as well?

[16:03] SOHAIB: I think one of the really interesting aspects of this area of law is the courts will probably be going back to some of these fundamental principles in order to understand this new technology. And one of those principles for me is the Nemo Dat Quod Non Habet principle, which is that one cannot give what they do not have. So, I think one of the ways that this ownership aspect is going to develop is to really look at the manner in which somebody obtained a digital asset. Was it a product of outright theft? And in that case, they would never be able to get title to it? Or was it in the context of fraud, short of theft, where the digital asset maybe had voidable title, and the purchaser had no notice that there was fraud. And the courts are really going to put emphasis on the party that was in the best position to prevent the fraud.

[16:51] HUSEIN: Right, just like equitable principles.

[16:54] SOHAIB: Exactly. Transactions on the blockchain are anonymous, right? You don't automatically tie in identity to a cryptocurrency address that purchases something. So, you can receive a bunch of cryptocurrencies, you can buy an NFT. And one of the ways that ownership can be tracked is through this principle of Nemo Dat Quod Non Habet. I think that's going to be one of the ways the courts are going to look at this.

[Music Break]

[17:22] HUSEIN: A Mareva injunction is a specialized tool that a court can order to prevent a defendant from disposing of their assets in a way that may deprive the plaintiffs of a potential remedy. Although this concept is not new, the Ontario courts have recently issued the first reported Canadian decision of a Mareva injunction that especially freezes cryptocurrencies. And as digital assets become more popular, this specific issue may become more frequently litigated. So, I think it'd be helpful to start with a more detailed overview of what a Mareva injunction is. So, what is this tool and what's the case where someone might seek this order?

[17:57] SOHAIB: The Mareva injunction tool is used to freeze assets that may be at a real risk of dissipation. It's really intended to prevent the defendant from taking steps to make themselves judgment proof. Usually, a Mareva injunction is initially obtained exparte and it's only issued for about 10 days. And there's a return hearing on the 10th day for the other party to come and provide their side of the story.

[18:25] HUSEIN: Can you give examples of like when a court would order something like this.

[18:31] SOHAIB: It commonly get used in fraud cases. So, fraud doesn't have to be on the blockchain. It can occur with real estate or any sort of commodity in the real world. So, if there's a strong evidence of fraud, there is a strong chance that a Mareva injunction will be granted because there's an assumption at the courts that if you are somebody who commits fraud, then you are going to deal with assets obtained from fraud in a fraudulent manner.

[18:54] HUSEIN: Okay, so if there was this like fraudster or alleged fraudster, then the court could order them to freeze the assets so that there'd be enough money to pay the plaintiff, if the plaintiff was successful. Is that generally right?

[19:07] SOHAIB: Exactly, yes.

[19:08] HUSEIN: Okay. So, I know that this issue came to light in the crypto context in a recent case, which was controversial for other reasons as well. This is called Lee and Barbara. Can you walk us through what happened there?

[19:20] SOHAIB: Yeah, this is referred to commonly as the Ottawa Convoy class action. And this was a nuisance class action because obviously, a lot of individuals in the wake of COVID-19 had come to downtown Ottawa, and had blocked off a lot of the downtown court, but we're also making a lot of noise and were also causing a lot of damage, like property damage, and making life difficult for inhabitants of downtown Ottawa. So, this injunction was sought in an entirely unprecedented setting within the nuisance area of law.

[20:00] But the funding for these Ottawa convoyed protesters, one of the ways that they were getting funding was through cryptocurrency. And the decision actually states that they had a belief that cryptocurrency was actually outside the jurisdiction of the courts, and therefore they were using this as a way to fund their ongoing protest.

[20:17] HUSEIN: Tell us more about how this Mareva injunction came about.

[20:20] SOHAIB: So, perhaps I'll start with the test for a Mareva injunction. The general test for an injunction is the three-part test that is from the RJR MacDonald case, that there has to be a strong prima facie case. So, you're likely to succeed or trial. There's going to be irreparable harm if it's not granted. And the balance of convenience, favors this granting.

[20:41] HUSEIN: And this is analogous to the test for a stay of proceedings as well, right?

[20:45] SOHAIB: Yes, I believe so. And in the context of a Mareva injunction, there's a few other requirements. And those are, you have to prove that the defendants have assets in your jurisdiction. And you have to prove that there's a real risk of dissipation of assets. And you also have to do some sort of undertaking extra damages. So, for example, if you freeze somebody's assets, then there's this onus on the person who's obtaining that order to basically compensate the individual for any damages that may accrue as a result of this. And within this context, the Court granted the Mareva injunction within the context of the nuisance claim.

[21:20] HUSEIN: What's significant about this decision, at least in the crypto space?

[21:24] SOHAIB: The court is taking jurisdiction over this cryptocurrency area, and they're showing that, "Hey, we are going to take jurisdiction over it." There's this view that blockchain is jurisdiction-less. So, therefore, there is no single jurisdiction that can claim any sort of asset ownership over cryptocurrency assets. But clearly, the court can. And in this particular case, they were using regulated, centralized exchanges in Canada. And some of those exchanges were subjected to the Mareva order and therefore had to freeze the cryptocurrency assets that were held by these individuals.

[21:54] HUSEIN: So, we have this… I'm not going to say a lot of case, but we have at least a few cases that have ruled about Mareva injunctions in the crypto law space. So, as a crypto lawyer, what are you or other crypto lawyers thinking about in light of these developments?

[22:08] SOHAIB: It's interesting, because there is another case Kirschenberg versus Schneider, that's 2023 ONSC case. In that case, an Anton Piller order was granted, but the Mareva injunction was not. And the reason that the Mareva injunction order was not granted was because the court said, just because you're dealing in cryptocurrency, does not in and of itself mean that you're going to get a Mareva injunction order.

[22:35] So, just because cryptocurrency is being used, it doesn't heighten the risk of dissipation, you actually have to go through the evidentiary process of being able to prove that there is a real risk of dissipation of assets. For me as a lawyer in the space, I really make sure that the evidentiary record is clear, that we've been able to trace and track those cryptocurrency funds, and that we've been able to present a compelling case that shows that there is a real risk of dissipation of these assets.

[23:00] HUSEIN: And is that a challenge to track these funds? I know that it's not conventional currency.

[23:07] SOHAIB: It can be very, very tedious. One of the things that makes it extremely complicated is… especially in the case of fraudsters, what they'll do is, they'll move funds between different blockchains, between different layers of a blockchain. And they'll often use these things called cryptocurrency mixers. And what cryptocurrency mixers do is they often obfuscate the source of the funds. So, if you can imagine, I was to send a transaction from address A to address B, that's relatively easy to trace. But if I was to send transaction A to a cryptocurrency address X, and then B received cryptocurrency tokens from cryptocurrency address Y, that transaction is actually next to impossible to trace.

[23:47] So, a lot of fraudsters have been using cryptocurrency mixers. And cryptocurrency mixers have actually been the subject of sanctions within the United States, meaning it's now an offence to use cryptocurrency mixers. In fact, North Korea has been using a lot of cryptocurrency mixers.

[24:02] HUSEIN: Well, that's promising sign. So, what do you do that if you're a crypto lawyer, and you're trying to bring this Mareva injunction, but also need to figure out how all these crypto currencies is been moved?

[24:14] SOHAIB: Yeah, I use a tool known as Breadcrumbs. It's a paid application, and it helps with mapping and tracing of funds. So, that tool will allow me to clean up the smaller transactions and to find a number of accounts that appear to be connected. And then I'll use a second software known as Bubblemaps just sort of connect these accounts and make compelling case that these addresses are tied to one or the other. So, for example, if I send $100,000 to another address, it's very likely that those two addresses belong to the same individual.

[Music Break]

[24:51] HUSEIN: This spring of 2023 the Canadian Securities Administrators also known as the CSA, published a new notice that adds some new requirements for the websites that let people sell cryptocurrencies, also known as Crypto Asset Trading Platforms, or CTP. And these new requirements are designed to enhance investor protection with a more tightly regulated framework. And these requirements are getting crypto lawyers thinking about implementation, and what this might signal about more checks and balances in the trading of cryptocurrencies. So, I know there's a lot of background for that. So, I'm hoping you start by giving us a brief background into what was going on with respect to this guidance?

[25:31] SOHAIB: Absolutely. This guidance comes in the wake of a number of events within the cryptocurrency ecosystem that I think can only be described as catastrophic in nature. Three major players in 2022 ended up going completely insolvent and losing a lot of consumer funds. And that was basically the impetus for these guidances. So, the first of these was the Terra stable coin crash. This was a top cryptocurrency offering consumers only 20% API. Celsius was a borrowing and lending platform that was also considered a safe bet within cryptocurrency. And then FTX, which was the second biggest cryptocurrency exchange also ended up going down.

[26:14] So, these three events are really, really large events in the sense that they were considered, "safe bets" within the cryptocurrency ecosystem, and everyday consumers ended up losing a lot of money. So, that was the impetus for these guidance to come forward.

[26:27] HUSEIN: So, we see CTPs, these Crypto Asset Trading Platforms, is what this notice is all about. I provided a brief summary in the introduction. Can you tell us more about what these platforms are exactly and who is captured under this notice?

[26:40] SOHAIB: Yes, so CTPs are centralized exchanges that allow consumers to be able to purchase cryptocurrency using fiat currency. One way to think about this as being analogous to stocks is purchasing stocks through an application like Wealth Simple. These cryptocurrency Exchanges allow users to buy a number of cryptocurrency tokens, they used to offer the ability to margin or leverage trade. And they're also the off ramps.

[27:11] So, when somebody has cryptocurrency within the ecosystem, they can use the centralized exchange to convert their cryptocurrency into Fiat currency and then send that back into their bank. Centralized exchanges are required to verify the identity of users on their platform, that's referred to as KYC. So, they're regulated entities in Canada.

[27:29] HUSEIN: I know that this whole notice that's getting a lot of attention came about fairly recently, and in this CSA, the security regulators presented this ultimatum that says these platforms either need to stop operating in Canada, or agree with some undertakings, known as a preregistration. undertaking. So, can you tell us more about what this undertaking looks like and what they're expected to comply with?

[27:54] SOHAIB: Yeah, so in August of 2022, there was a notice that was put out by the Canadian Securities Administrators relating to the requirement for CTPs to file what is known as a pre-registration undertaking or a PRU, like you mentioned. And this was really intended to enhance investor protections. Some of the things that are captured within this PRU requirements are no recommendations or advice relating to what cryptocurrencies can be purchased. There were certain investment limits that were imposed. There were certain risk statements that had to be provided to consumers.

[28:32] And there were also other requirements, like for example, third party custodians needed to hold no less than 80% of the cryptocurrency assets on behalf of these clients. Now, CSA Staff Notice 21332, it was released in around February of 2023 and that was after the FTX collapse. And now this imported, this enhanced PRU requirements on these cryptocurrency Exchanges.

[28:57] HUSEIN: And if the platforms don't comply with these requirements, what would happen to them?

[29:03] SOHAIB: So, a few of the platforms have actually been outright banned in Canada. So, KuCoin, which was a really big exchange has been banned. Poloniex has been banned. And what securities regulators are able to do is they can in addition to these what are called conduct orders which implement some sort of ban, they can also impose monetary sanctions up to a million dollars or what are known as disgorgement orders where whatever amount that the cryptocurrency exchange in question was able to gain as a result of their business, they may be required at law to give that amount up.

[29:34] HUSEIN: Okay, now you're talking about investor protection, I was wondering like as a lawyer practicing in this area, what do you think about the regulator tacking on these requirements for these platforms? Do you think that will meaningfully help protection?

[29:47] SOHAIB: In certain regards, I can see why this would be really, really good for investor protections. One of these is what are referred to as value reference back assets or the stable coins. Stable coins are cryptocurrency tokens that are pegged to some sort of Fiat currency, the most common of them is the US dollar. So, the idea here is let's say I have $50,000, instead of buying Bitcoin, which is extremely volatile, I might decide to invest in a stable coin and hold that value in a cryptocurrency that I have in my own cryptocurrency wallet.

[30:23] Now stable coins can be either algorithmically backed or they can be backed by fiat currency. So, an algorithm is literally some sort of computer-generated mechanism that is increasing the number of these stable coins that are circulating or decreasing them algorithmically. It's not backed by any real-world asset.

[30:38] HUSEIN: So, who is controlling this algorithm? Is this like the blockchain or…?

[30:44] SOHAIB: It's on the basis of whatever smart contract code that was programmed whenever this cryptocurrency token was released. With respect to Fiat-backed cryptocurrency tokens, these are cryptocurrency tokens that are literally backed by real world assets. So, you might have USTC, which has over 27 banks in the United States where they store gold, where they store cash, where they have regular audits to make sure that the amount of cryptocurrency stable coins that they have in circulation is always backed by some value that is equivalent in the real world.

[31:15] In order for you to be able to sell a stable coin, and these are cryptocurrency assets that are pegged in value to a Fiat currency. In order for you to be able to sell those you have to actually seek written permission from the regulator in order to do so. You're no longer allowed to leverage trade even if you are a "permitted client". And the amount of cryptocurrency token with the exception of a few like Bitcoin and Ethereum and Litecoin and Bitcoin Cash, consumers can only purchase $30,000 worth of these other cryptocurrency assets within a 12-month period.

[31:48] HUSEIN: So, what do you think in terms of having cryptocurrency that's backed by a Fiat currency versus algorithm? How did this play out in terms of this notice?

[31:58] SOHAIB: So, the events that we've seen with respect to Terra Luna, that was an algorithmically-backed stable coin, and the total loss amongst consumers was in excess of $60 billion. Because the thing just blew up, it de-pegged. And everyone who maybe had a million or $2 million in this "safe" stable coin ended up losing all their money, because the value of that coin went to zero.

[32:23] HUSEIN: And just kind of affirms what everyone was afraid of, these volatile cryptocurrencies, right?

[32:26] SOHAIB: Exactly. But this is a stable coin. This is not supposed to change in value, it's supposed to maintain its value, and it's considered the "safe bet". As a result of that, I think that this guidance specifically gets rid of that algorithmically-backed stable coin, and doesn't allow CDP's to sell them to Canadian consumers. It does allow them to sell fiat-backed stable coins, but they have to seek permission from the regulator in order to do so.

[32:52] HUSEIN: This guidance is pretty consequential, both for people who are operating on conventional cryptocurrencies and for the platform. So, what do you think this might mean for crypto lawyers going forwards when they're advising their clients about compliance issues or implementation or anything else?

[33:07] SOHAIB: I think more will apply to new cryptocurrency Exchanges that want to come into Canada. Lawyers have to really think about all of the enhanced requirements that this PRU mandates on these Exchanges, otherwise they won't be able to operate in Canada. Personally, as a cryptocurrency lawyer, one of the things that I've been thinking about a lot because of recent decisions in the United States, specifically the Ripple decision, I've been thinking about the fundamental question of jurisdiction in this space, and whether or not it's even appropriate for the securities regulators.

[33:36] And I'm not saying that it's not, I'm just saying that the question is there about whether or not it's appropriate for them to be regulating this area when the United States Superior Court or Southern District of New York Court found that Ripple in itself was more like a commodity and on its own was not something that fell into securitization risk.

[Music Break]

[34:04] HUSEIN: And to wrap up, we're going to do our Ask-Me-Anything segment with Sohaib, to speak about some of the questions that have been spent about the area of crypto law. As listeners of our show will know, one of the bonus rewards we have for members of our crowd funding community is the opportunity to submit questions that they want to hear answered on the show about our guest's area of expertise. That can be anything at all, so long as they're not asking for legal advice. And if you want to find out how you can become a patreon and get rewards just like this, which includes the opportunity to submit your own questions, you can check out our crowd-funding website, which is www.lawyeredpodcast.com/patreon. There's a lot more information there as well.

[34:41] Okay, so we have a bunch of interesting questions and timely questions about this area of law. And the first one is, "I understand that you recently argued a case about whether a plaintiff can properly serve a defendant by way of an NFT AirDrops". Can you tell us a bit more about that case and that outcome as well?

[34:59] SOHAIB: Absolutely. I've been involved with the NFT space for a few years. Last year, I heard about two decisions one in the United States, one in the United Kingdom, where service of an order and a Statement of Claim was allowed via an NFT AirDrop. Now NFT's are non-fungible tokens. And one of the ways that they can be viewed in most cryptocurrency wallet applications as well as on cryptocurrency marketplaces is through a visual medium such as an artistic medium, and they can be programmed to be audio, they can be programmed to be video. And one of the things that you can do with an NFT is you can actually display the order on the NFT's face.

[35:40] And in these cases, the only thing that was known about the alleged fraudster or the alleged defendant in the case was a cryptocurrency wallet address. In the United States and in the United Kingdom, the courts allowed an NFT AirDrop. And there's a number of ways that you can ensure that an NFT AirDrop has come to the notice of the defendant. One of those is if they transfer that NFT out of their wallet, you know that they have received it. A lot of these NFTs can be programmed to have what's known as a grappling hook. So, they record that this specific link that is only accessible to this cryptocurrency wallet has actually been viewed…

[36:15] HUSEIN: So, that is kind of like a read receipt.

[36:17] SOHAIB: Exactly. And this is the language that these individuals interact in. So, it's not like I'm sending it to some random cryptocurrency. This is the only thing that we know about these individuals, and there is some likelihood that it is going to come to their attention. So, relying on that jurisprudence, we had an unknown, a John Doe defendant in one of the cases. And the Ontario Superior Court agreed that this was one of the ways that we could affect service via substituted means.

[36:44] HUSEIN: And this was like the first case, to your knowledge that had addressed this issue, right?

[36:50] SOHAIB: In Canada, yes.

[36:52] HUSEIN: So, what was that like to argue a case like that? That's kind of like breaking new ground in this area.

[36:57] SOHAIB: I was about to jump up. You know, this is the first case that I've been at in front of a judge. This is the first time that I was standing in front of a judge, I was pursuing an ex parte Mareva injunction and I worked so hard. And I was like, we have a very strong case. But I can understand why the court would not want to adopt this technology. So, I'm not going to be disappointed if they say no. And to my surprise, the Justice was like, "Yeah, I think you have a good case here." And I think we had at least three different ways that we could record that the NFT had actually been received.

[37:28] HUSEIN: Okay, interesting. Yeah, it's exciting to have that to kind of shape the law and then deal with these new issues, I'm sure this issue is going to come up down the line, numerous times as well. So, next question we have is, "What legal risk should cryptocurrency users be aware of when trading or investing in digital assets, especially with volatile currencies like Bitcoin?"

[37:50] SOHAIB: I would strongly recommend that individuals who don't know how to interact with the ecosystem go through a centralized exchange that has received approval from one of the securities regulators. That way you can go and you can invest in cryptocurrencies that are approved, that are considered a little bit safer. And you can still experience some of that exciting volatility, but you have less risk that your cryptocurrency assets are going to be lost.

[38:18] If you're going to go and interact directly with one of these decentralized finance protocols, or you're going to purchase NFTs or you're going to try to interact directly with a smart contract, there is a high probability, if you don't know what you're doing that you can end up losing a lot of your money. So, even like a simple swap, if you don't set the percentage that you're going to allow in either direction, because these things are very, very volatile, you can end up losing all of your money, and it's going to be very difficult to get that money back. And if you've been defrauded, it's going to be very difficult to trace those fraudsters. So, I would encourage you to go through the regulated routes if you don't know what you're doing.

[38:53] HUSEIN: But in fairness, can't you also lose a lot of money if you're going through like a well-regulated platform?

[38:59] SOHAIB: Absolutely. But my understanding of the way that these regulated platforms operate is they go through an intense vetting process. So, you're not going to be able to buy for example, like Pepe coin, on a highly respected Exchange, you're going to be able to buy Bitcoin, Ethereum people who have known founders that have registered corporations, that have met the requirements in their jurisdictions that they need to in order to make sure that they're not a security and whatnot. So, there's greater investor protections there for sure.

[39:32] HUSEIN: You mentioned you should go to like a respected or well-regulated platform. Are there any particular platforms you would suggest as a new user tips for?

[39:42] SOHAIB: I think Coinbase and Kraken. Kraken is Payward Inc. They've both submitted enhanced PRUs, they haven't been approved yet, but they're on the list of people that have submitted their PRU and they're really intended to be user friendly. Coinbase, I know you can just directly plug in your debit card and purchase cryptocurrency, which is great. I think with Kraken, you might have to actually use like one of those bank drafts to send money to them. But they're both generally very, very user friendly. And they have a lot of educational material as well for consumers.

[40:14] HUSEIN: Are there any other legal risks? So, let's say you're a company and you want to start using crypto for whatever, your transactions or security mechanisms or something else. Are there any specific legal risks that they should be aware of before they jump into this?

[40:31] SOHAIB: Yeah, I think one of the interesting developments here is if you're launching a project, you want to make sure that you're not captured within securitization risk. So, you're not selling a security to the public. In addition to that, you want to make sure that you're not going to be qualified or classified as a money service business, which is what these crypto trading platforms are. And if you are, then you're going to sort of have to file these enhanced PRU requirements. Those are the two major things that I would look out for.

[41:02] HUSEIN: Next question we have is, "How can individuals and businesses stay updated on changes in Canadian cryptocurrency laws and regulations?" As we're talking about laws are changing by the day.

[41:13] SOHAIB: Absolutely. So, the Canadian Securities Administrators website is a good place to monitor on a bi-weekly or monthly basis, because they at least twice or three times a year have some sort of new guidance, or a news release related to cryptocurrency. So, that's one of the ways that you can stay on top of what's going on in the security space. I would also recommend keeping an eye on the CRA website, they haven't provided a lot of updates, but I do know that they're going to be providing… sorry, I don't know that they're going to be providing, but these are issues that are going to come up within the tax context as well. And they have in the past provided context.

[41:50] Every month, I go and just do a search for cryptocurrency and NFTs endows, just to see if there have been any new cases. And then lastly, I would recommend Coin Desk, it's not a CBC newspaper. It's like the equivalent of CBC, but within the cryptocurrency space. So, you can take that with a grain of salt, but they have all of the most recent developments in cryptocurrency, like within the hours to have a pulse on the market.

[42:15] And one of the things that's really exciting is anytime that there's something happening in any of the other jurisdictions, they'll release something on their platform. So, you can look that there's this new bill that's been proposed. So, you can know that this is going on, or the Securities Administrators have come after this NFT project, and you can be aware that that's going on. So, that's a good way to keep a pulse on the market.

[42:34] HUSEIN: And next question we have is, "What do you see as some of the opportunities and challenges of blockchain technology adoption, in various industries?"

[42:44] SOHAIB: So, the way that I see blockchain technology is similar to the way that the internet was emerging in the 1990s. I think a lot of people, even if you go, and you look at the articles that were coming out in the 1990s, they were referring to the internet as a scam. And there was a lack of understanding in terms of what was happening. And a lot of people unfortunately, missed out. A lot of people also lost a lot of money investing in .com stocks that were basically filled with no value.

[43:11] But I think that there is a real opportunity for the government to embrace this technology and really allow it to proliferate. At the same time, the interaction that consumers have with this technology needs to become more seamless, it's very, very difficult for the average individual to understand what's going on, how not to lose your cryptocurrency. What's a crypto private key? What's a public key? What's a seed phrase? All of those terms are very, very alien. I think the Exchanges are doing a good job in terms of education. But we need more of that to make this technology and interaction with it seamless.

[43:43] HUSEIN: And are there any specific industries that you think blockchain would be a good fit for?

[43:51] SOHAIB: I actually can think of very few industries where the implementation of blockchain wouldn't significantly improve that industry.

[43:57] HUSEIN: And why do you say that?

[43:59] SOHAIB: There are a lot of benefits in terms of governance that can be carried on the blockchain. So, one of the emerging "business structures" is that of a Decentralized Autonomous Organization – DAOs. These are governance forms that don't rely on any sort of central authority. So, the idea here is you can't have any central individual corrupt governance. And that can apply to any structure across all sorts of different areas.

[44:26] HUSEIN: Tell us the challenges. We've touched on volatility before and I think like, even if you're dealing with a stable platform, there seem to be a fair amount of risk, whether it's legal or financial risk in doing these transactions. But do you see that risk being adjusted for or being minimized in the future?

[44:46] SOHAIB: I think that that risk is going to remain, because the earlier adopters of cryptocurrency, they have a good understanding of what's going on. But for new people that are coming into the ecosystem, one of the only ways that you can actually purchase crypto currency is through a centralized Exchange and there's a mechanism to be able to track things. One of the problems in this space has always been jurisdiction and tracking individuals that are behind something. So, those are the two big challenges that I see in the future.

[45:13] HUSEIN: Last question we have—which is a great segue—is, "How do you see this area of cryptocurrency law evolving over the next couple of years?

[45:21] SOHAIB: It's interesting, because I can't think of an area of law that is not going to be affected by cryptocurrency. I think it will intersect across every single area of law, criminal for sure, because of the theft implications, civil because of the fraud implications, but it has implications for family law. Okay, what were your assets at the time that you got married? What were your assets at the time you got divorced? Estates: Do you have cryptocurrency tokens? Intellectual property: Is there copyright in an NFT? Is the NFT or the token that you're selling actually a security? Fraud and theft: *nemo dat quod non habet*.

[45:55] There's other policy areas like, should we be charging royalties on the sale of non-fungible tokens as a way to allow creators to be able to get a portion of future revenues associated with the sale of their art? And that has implications for ownership rights in general, and property rights. So, I think it'll intersect across every area of law.

[46:16] HUSEIN: We talked about a couple of substantive issues during this episode, like this Code of Law defense, Mareva injunctions. Are there any other questions you think will be answered soon in the next couple of years about the parameters of crypto law?

[46:32] SOHAIB: I think we'll have more clarity on the securities front. I know that there's been quite a bit of work that is being done in the United States. And we'll have a better understanding of how jurisdiction within this context is going to take place. There have been some proposed bills in the United States that tried to put jurisdiction over cryptocurrency between the CFTC and these securities regulators in the United States. So, there's this jurisdictional battle that's going on, I think we'll get clarity on where exactly jurisdiction falls. And we might end up seeing a bill in Canada, if we have approval of a bill in the United States.

[47:08] HUSEIN: So, Sohaib, I want to thank you so much for chatting with us about these exciting issues. Again, to be candid, before we started, this episode, I was a bit uneasy, but this is very much outside of my area of expertise. I consider myself pretty high on the tech literacy scale. But all these terms, I found were kind of outside my domain. But you did a great job of explaining to us at a very basic level, how all these terms and concepts are operating, and there is a lot of evolution that's happening in real time. It's really cool to speak with someone who's actually directly influencing, at least a portion of this area as well. So, I want to thank you so much for sharing your insights with us and we look forward to staying in touch in the future.

[47:46] SOHAIB: Thanks, Husein. It was a pleasure, thank you.

[Music Break]

[47:55] HUSEIN: And that's going to do it for this episode of Lawyered. Thanks for listening. On today's episode, our guests with Sohaib Mohammad. You can learn more about him and his practice at his firm's website, the firm is called DeLawyer, and the website is spelled delawyer.io. And for more about today's show and links to all the cases and regulation that we spoke about today. You can find those on our website, which is lawyeredpodcast.com.

[48:25] On our next episode, in about two weeks' time, we'll be shifting gear to speak about the area of Workplace Investigations Law. And our guest is going to be Christine Tomlinson, who is one of the leading experts in this field, literally wrote a book on this topic. There's a bunch of new decisions in case law in this area. So, we're going to be speaking about some new guidance related to the area of workplace cultures, apparently toxic workplace cultures, the duty of care that's owed to complainants and factors that can deem an investigation to be improper.

[48:53] And if you want help to improve the show and get some neat and affordable legal rewards, including the opportunity to submit questions for our show, it'd be very helpful if you could become a patreon of our show. Just toss a couple of dollars per month, and it really helps to move the needle acts of justice and make the show more accessible to more people. You can learn more about how to do that on our crowd-funding website, which is www.lawyeredpodcast.com/patreon.

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