

The DAO

In the summer of 2016, the crypto world experienced an important event – the introduction of an entity called ‘The DAO.’ What seemed like a great success quickly turned into a debacle, with a hacker exploiting bugs in the software code to steal millions of dollars worth of Ether from the other investors in the DAO. The Ethereum community struggled with how and whether to remedy the theft, given that investments in The DAO had stated that the contract amongst the parties was reflected in the software code alone. Ultimately, the Ethereum community decided to steal the funds back from the hacker by revising the blockchain record.

The experience of The DAO raises numerous legal questions. We will gain familiarity with The DAO story and begin to consider some of the legal questions this week. Future classes will draw from our learnings about The DAO.

READINGS:

Morgen Peck, *Ethereum’s \$150-Million Blockchain-Powered Fund Opens Just as Researchers Call For a Halt*, IEEE Spectrum, May 28, 2016.

<https://spectrum.ieee.org/tech-talk/computing/networks/ethereums-150-million-dollar-dao-opens-for-business-just-as-researchers-call-for-a-moratorium>

Cade Metz, *The Biggest Crowdfunding Project Ever – the DAO – Is Kind of a Mess*, Wired, June 6, 2016.

<https://www.wired.com/2016/06/biggest-crowdfunding-project-ever-dao-mess/>

The DAO White Paper: Christoph Jentzsch, DECENTRALIZED AUTONOMOUS ORGANIZATION TO AUTOMATE GOVERNANCE FINAL DRAFT - UNDER REVIEW

<https://download.slock.it/public/DAO/WhitePaper.pdf> (skim)

Matthew Leising, *The Ether Thief*, Bloomberg, June 13, 2017.

<https://www.bloomberg.com/features/2017-the-ether-thief/>

SEC 21(a) Report on The DAO, July 25, 2017.

<https://www.sec.gov/litigation/investreport/34-81207.pdf>

Angela Walch, *Call Blockchain Developers What They Are: Fiduciaries*, American Banker, August 9, 2016.

<https://www.americanbanker.com/opinion/call-blockchain-developers-what-they-are-fiduciaries>

REFLECTION QUESTIONS:

What were the goals of the creators of the DAO? What was the DAO supposed to do and be?

Why was the DAO successful in raising funds? What was the plan for what to do with the funds?

How did the creators of the DAO envision it transforming legal and financial structures more generally?

How was the decision made to seek to recover funds from the DAO hacker? How was it decided whether the hacker's actions were acceptable or unacceptable? Were there any explicit rules that governed this decision-making process?

Who is accountable for the bug in the code? How would we decide this? Under a negligence standard? What functions as the contract about the code in this instance?

Why did the Securities & Exchange Commission issue a report about the DAO? Why was this event relevant to the SEC?

What did the SEC conclude in its report?

Any other big questions that you see raised by this dramatic event?

ACTIVITY:

Treat the events around The DAO as an exam issue spotter. Identify and explain the potential legal claims that various parties in the events may have. Who are all the potential parties who may have a claim? How likely is the claim to be successful? What will be the issues in establishing the claim?