

## **How Cryptocurrency's Key Players Navigate Market Challenges and New Laws**

Sam Gandhi, Teresa Wilton Harman, Stephen Hassler, and Dennis Twomey  
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### **Sam Gandhi:**

It's a wake-up call for the cryptocurrency industry. Falling prices have created dangers, but also opportunities for market participants. How will investors, lenders, and the courts respond? What new regulations could be imposed and who will survive? In today's podcast we'll find out what's next for cryptocurrencies.

### **Dennis Twomey:**

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### **Teresa Wilton Harmon:**

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The struggle likely will be about who gets to capture the value or who has to bear the cost of price movements meaningfully in either direction.

### **Sam Gandhi:**

From the international law firm, Sidley Austin, this is *The Sidley Podcast*, where we tackle cutting-edge issues in the law and put them in perspective for businesspeople today. I'm Sam Gandhi.

Hello, and welcome to this edition of *The Sidley Podcast*, Episode number 29. Today, we speak with three of Sidley's thought leaders Teresa Wilton Harman, Stephen Hassler, and Dennis Twomey about the complex legal issues involved in the crypto space and how the industry is evolving.

Teresa is the managing partner of the Sidley Chicago office, a member of the firm's Executive Committee, and a partner in the firm's Global Finance practice. She focuses on financial transactions and commercial law. This experience encompasses secured and unsecured loans workouts, and restructurings, structured financing securitization, and she advises clients across the digital assets industry, including those creating digital assets, custodians, wallet providers and trading platforms, financial institutions and fintech companies, and investment banks.

Steve is the global practice leader of Sidley's Restructuring group. His practice encompasses representing debtors, creditors, and investors in corporate Chapter 11 cases, out of court restructurings, and acquisitions. Steve has counseled clients across numerous industries including energy gaming, hospitality, real estate, telecommunications, financial services, and manufacturing.

Dennis is a partner in Sidley's restructuring group and has more than 20 years of experience representing clients in complex corporate restructurings and bankruptcies. He's advised debtors lenders, purchaser sponsors, and committees in both in court and out of court workouts and restructurings. And his matters have spanned various industries including healthcare, hospitality, manufacturing, automotive, financial services, retail, energy, and more recently, digital assets. Teresa, Steve, Dennis, great to have you on the podcast.

**Teresa Wilton Harmon:**

Thanks, Sam.

**Stephen Hessler:**

Thanks very much, Sam. Great to be here.

**Dennis Twomey:**

Thanks, Sam. Great to be here.

**Sam Gandhi:**

This year has been challenging for many businesses with the stock market volatility that you've seen, including those in the digital asset space. Cryptocurrency in particular has been in the headlines, and it's been extremely popular. But even with that exposure, it's still considered novel and a little mysterious in the minds of many people. Teresa, let me start with you. And before we get into recent developments and where the industry is headed, let's talk about digital currencies. There continues to be some confusion about what exactly that is. And a lot of people conflate what they think about blockchain with Bitcoin with digital currencies with crypto. Let's unpack the nuances if you can.

**Teresa Wilton Harmon:**

Sure, Sam, and let's start with blockchain. Blockchain is a key enabler for digital assets. It's essentially a recordkeeping tool, a way to create a trusted record of transactions using computer technology. It's designed to be better, stronger, faster than the network of intermediaries that we use today, and then our existing ways of transacting.

When we talk about digital assets and cryptocurrency then we're talking about valuable assets that are recorded on the blockchain. They couldn't exist in the same way without it. cryptocurrencies, are digital assets that are used as mediums of exchange or as stores of value. They can be used to transact more quickly and efficiently. And Bitcoin is one type of cryptocurrency. There are others though, and they have different risks and different uses. Some cryptocurrencies can fluctuate wildly in value, we have seen that this year. Others like some stable coins, not all, tend to hold a steady value. And we even expect to see central banks issued digital currencies in the near future.

**Sam Gandhi:**

So, Teresa, you can use the blockchain with U.S. dollars. You don't need to use cryptocurrency to use the blockchain?

**Teresa Wilton Harmon:**

That's correct. And you can use it with non-fungible tokens. You can use it to record securities, you can use it to record accounts receivable, all kinds of different assets.

**Sam Gandhi:**

Dennis, while we're setting the stage of what we're actually talking about what types of businesses are in the crypto industry. We hear everything from custodians and other buzzwords is mysterious as being a minor and exchange. What does all that mean?

**Dennis Twomey:**

Perhaps stating the obvious, Sam, the crypto industry really has grown exponentially in the past couple of years in particular, and now is really a mainstream industry in terms of consumer access and participation in the crypto space. With that, the types of businesses falling under the broad crypto currency or digital asset umbrella has also expanded. And to just name a few, let's start with mining companies.

These are companies that use high tech computers to solve the complex mathematical equations that verify crypto transactions, and they add those transactions to the blockchain. These mining companies require significant energy input to power the computing equipment that they use to verify the transactions. The mining businesses also need facilities to host this equipment, and in return as compensation for verifying these transactions, the company received newly generated crypto such as Bitcoin. So that's how the mining companies work.

We also have exchanges and brokerages, some of which are focused solely on digital assets. These exchanges and brokerage are similar to traditional stock exchanges and brokerages, except they facilitate purchases, sales, trades, etc., of digital assets instead of traditional securities. However, they're not regulated in the same manner as traditional stock exchange and brokerages.

We also have crypto-focused hedge funds out there. These are simply hedge funds that have a focus on crypto and other digital assets in terms of how they invest. They're also custodians and wallet providers. And these are businesses that provide crypto storage and similar services to crypto investors, such as digital wallets for storage of digital assets.

It's important to recognize here that these businesses can be impacted by a variety of factors, many of which are not limited to the digital asset world. For example, as I mentioned mining companies earlier, the price of energy can have a huge impact on those particular businesses because energy is

a huge and significant input into how they operate. And it's also worth noting that not all issues will apply equally to all of these businesses.

For example, while regulatory changes could greatly affect how certain of the crypto-based finance platforms operate, those changes might have a lesser effect or a different effect on digital asset custodians. As digital assets are becoming more and more commonplace, it's fair to say that virtually all players in the stream of commerce are going to have some contact with digital assets.

**Sam Gandhi:**

Teresa, circling back to you your thoughts here on the various participants in this industry.

**Teresa Wilton Harmon:**

Dennis ended it exactly the right way, just about everyone is going to have some touch to cryptocurrencies at some point. We see traditional lenders who are taking all asset collateral packages dealing with companies that really aren't cryptocurrency companies, per se, but they may have a small wallet of crypto somewhere. We're looking at supply chain issues where one of the parties in the supply chain is buying or selling product using cryptocurrency and that can have an effect. And we're looking at investors and mainstream companies that are starting to do a little bit of work in the crypto space, and they're affected by it as well.

**Sam Gandhi:**

It seems like there's tons of intermarket and intramarket connectivity with these players and assets. And Steve, let me come to you in terms of explaining what precipitated some of the challenges the industry faced this summer? And given the interconnectivity, who's affected?

**Stephen Hessler:**

Yeah, it's an excellent question, Sam, because interconnectivity really is a key theme that we're going to explore here because it exemplifies really just how interwoven the cryptocurrency market is, both between and amongst the participants and then between the broader marketplace and the cryptocurrency marketplace.

The general consensus is that while there were a variety of factors that led to the recent downtick in crypto assets, these can largely be sorted into, let's say, two buckets. The first bucket is the general deterioration of what we'll say macroeconomic conditions. Cryptocurrencies, generally, have done well when economic performance overall is favorable and when liquidity is abundant.

In recent quarters, the reverse came to bear we had inflationary fears, higher interest rates, the war in Ukraine, among other broader factors. These all contributed to an environment where cryptocurrency values fell dramatically over the summer from earlier highs.

The second bucket are more digital asset specific factors. The key one that a lot of folks have been pointing to was the relatively recent collapse of what's referred to as the Terra (LUNA) blockchain protocol, which was one of the larger blockchain protocols. Many institutions including specifically hedge funds, exchanges, and other crypto lenders had very meaningful exposure to that blockchain. And those losses created a number of forced liquidations and plummeting consumer confidence. But what this downturn has highlighted is that there was a fair bit of overlap in the marketplace, perhaps even more so than we all generally realized. So this distress can and did spread very rapidly.

As to the related question of who was affected? The answer is really the entire industry has been impacted by these declines. Certainly retail and other first time investors faced a lot of pain, but so have the digital asset businesses. And this has in turn created a lot of pressure on Bitcoin miners as well. Their business model relies on the price of Bitcoin, since that is their "product" or the output of their labor. And with Bitcoin prices falling, while energy prices are rising, these entities are really getting squeezed. So those are just a few examples, but they highlight how the distress is very widespread.

### **Sam Gandhi:**

Let's talk a little bit about the regulatory aspect of this. And in mid-September, the White House released its first ever comprehensive framework for the responsible development of digital assets. And that report outlines the recommendations of various federal agencies after six months of study. And the Biden Administration called on regulators to

aggressively pursue investigations and enforcement actions against unlawful practices. Teresa, what do you think of that statement? And what are the unsettled legal issues in the space? And how do participants in this industry navigate them?

**Teresa Wilton Harmon:**

Sure. Well, that's a pretty heads-up that the government is paying attention, and I think it's important for us to think through. Let's talk about the regulatory side first, and we can get to commercial law in a minute.

On the regulatory side, so far U.S. oversight has been marked by a patchwork of overlapping approaches, jurisdictional battles, some turf battles between the SEC and CFTC, to be honest, along with state regulators, and now, as you see, the White House and ultimately justice are getting more involved. There's some fundamental questions here of philosophy. What approach should regulation take? What level of attention should the government pay? And there really aren't jurisdictional boundaries, Sam. So international laws matter as well. We can't just think of the U.S.

Now, there's some pending legislation in Congress that may clarify things, but there is a long way to go. And this is extra complicated because the industry did not wait around for legal clarity. We have trillions of dollars in sophisticated, high-value transactions in the markets, and we are still figuring out what rules apply and how they'll be enforced. That is really stunning to me. And for lawyers and clients who want to win in this space, it can be daunting or really exciting.

Now, aside from the regulatory law piece, there are the commercial laws, the foundational rules for transactions and for financing in this space. And there, there's a different story. We've been using existing UCC or Uniform Commercial Code rules for intermediaries that hold assets and for pledging collateral in innovative ways from day one without any changes to the law so far. Now, sometimes those existing rules worked pretty well, but there were some big gaps.

So now there's a new version of the UCC focused on emerging tech and digital assets. Now, this will be rolling out in state legislatures starting this fall, and it will create, I believe, a much better playing field and some new

opportunities. Now, I was part of the drafting committee that wrote these new UCC rules. It was organized by the American Law Institute and the Uniform Law Commission and included input from hundreds of industry participants, and these new rules really are a game changer.

Under the new rules, you can do things that you can't clearly do today. You can transfer ownership of digital assets free and clear of existing claims. You can take perfected security interests in digital assets without filing UCC financing statements. And you can transfer things like digital accounts receivable and digital promissory notes on the blockchain with a new level of legal certainty. Now, of course, the devil's in the details, right, and we have to understand what these new rules require, and whether they apply, but I believe they'll immediately affect outcomes. So it's important to be prepared.

**Sam Gandhi:**

Teresa, let me ask you one follow up question on that. The DOJ just recently announced that they've got 150 prosecutors through their digital assets coordinating network that is there to jump on to enforcement actions in the digital asset space, but it's unclear whether you have jurisdiction, and it's unclear what the rules apply, what are they enforcing?

**Teresa Wilton Harmon:**

I honestly think they may still be trying to figure that out. And that's where lawyers are jumping in to get more involved. There are questions about whether things are securities. There are questions about whether proper disclosure was made. There are questions about whether insider trading can apply to cryptocurrencies. And then there are standard regulatory rules that protect consumers, that deal with money transmitters. Our lawyers here are looking at all of those regulatory issues and really thinking through with clients in advance and making sure that we're ready if the government comes knocking on the door.

**Sam Gandhi:**

You're listening to *The Sidley Podcast*, and we're speaking with Sidley thought leaders, Teresa Wilton Harmon, Stephen Hessler, and Dennis Twomey about developments in the crypto space, lessons learned, and how the entities move forward from here. Teresa, I'm going to come back



to you, how does the bankruptcy process adapt to best address cryptocurrency bankruptcies?

**Teresa Wilton Harmon:**

That's a great question, Sam. You know, bankruptcy courts really have one job. They're charged with sorting things out, usually pretty straightforward things. Who owns what assets? Can claims be set off against each other? Who has a pledge of collateral? Who has a security interest and can it be enforced under the bankruptcy rules? What's the value of a debtors assets? And if there isn't enough value to go around, whose claims are satisfied, and then whose claims aren't? But these things aren't as straightforward in a bankruptcy or insolvency proceeding involving cryptocurrencies or other digital assets. In fact, the law is still developing. So when a court tries to figure out who owns cryptocurrency, let's say, held by a custodian or a trading platform, there's not a lot of precedent yet.

Now, we expect a court will look at a variety of factors. The terms of the agreements between the parties are important. What are the economic interests? What is the business deal? What has been the disclosure? What was the accounting? How are the assets held, and were they commingled with the custodians or the trading platforms' own assets or were they segregated in a pool for customers.

Now, the regulatory framework of the custodian or the trading platform is going to matter too. Maybe it's a trust company. Special rules apply under state law. Maybe it's a money transmitter, and if so, maybe there's a constructive trust in favor of consumer assets under state law. And then some custodians and trading platforms have actually opted in to existing UCC rules for brokerage accounts to try to make a more clear landscape here.

These rules are contained in UCC Article 8, and they provide a much more clear answer in terms of clarifying the nature of the ownership interests in these assets and the obligation of a custodian or trading platform to obtain and maintain enough assets to satisfy the claims of its customers.

Now, when we work with clients, Sam, we think about these issues in advance. We don't wait to see what a bankruptcy courts going to say. And with the right agreements and structures, like maybe opting into UCC

Article 8 or properly segregating customer assets from proprietary assets, or properly protecting the assets that support a stable coin. We think that parties transacting in cryptocurrencies and digital assets can have more certainty and a much better shot at setting the table for the outcomes that they want.

**Sam Gandhi:**

Dennis, can you take us through some of the issues that have come up in court?

**Dennis Twomey:**

Absolutely, Sam. I think the issue that has generated the most attention in recent bankruptcy cases is the point that Teresa touched on a minute ago. And that is how will assets that have been transferred by retail customers to crypto-based finance platforms be treated when the platforms go bankrupt?

One point worth emphasizing here, this isn't a question at its core of bankruptcy law, property rights are governed by state law and other applicable non-bankruptcy law. So bankruptcy courts generally enforce those rights. The issue really came to the fore earlier this year, when the SEC published a new staff accounting bulletin SAB 121.

SAB 121 required entities with crypto platforms to include in their disclosure an analysis of the legal ownership of the crypto assets held for platform users, including consideration of whether they would be available to satisfy general creditor claims in the event of bankruptcy. These disclosures resulted in a deluge of media posts and negative market reaction. It became clear that many customers were caught off guard by the possibility that the assets they transferred to crypto platforms may become property of that platform's bankruptcy estate under certain circumstances. And a whole host of considerations can affect that analysis, as Teresa mentioned earlier.

The consequences here, and I can't emphasize this enough, can be significant. If these assets are treated as customer property, the customers are entitled to recover, and they can retain ownership, of those specific assets. If the property is property of the company that goes bankrupt, and therefore property of the estate in a bankruptcy, the company owns those

assets and the customers simply have an unsecured claim against the company. Needless to say these can result in two very different outcomes for the customers.

What we've learned to date from the bankruptcy court in this area is a few different things. One is, at a minimum, the automatic stay is going to prevent customer access to crypto assets that are held by the debtor, pending a determination by the bankruptcy court as to whether those assets are customer property or whether they're property of the state. And the answer, as I mentioned earlier, can vary and will vary from case to case. And even within a case, the answer may vary depending upon which program the customer signed up for meaning which program being run by the platform that the customer signed up for.

At a high level, in general, assets over which the debtor had ownership-like rights such as discretion over deployment of assets, commingling with other of the debtors' assets, and whether maybe the assets are held in debtor accounts, these are the types of indications that the assets should be deemed property of the estate.

I'll just mention turning to a couple of different topics very briefly, that had been generated by these cases. One involves the big picture, how will these bankruptcies and insolvencies ultimately conclude? In other words, will these businesses reorganize? Would that be possible? Or will they end up selling their assets? And will that be the ultimate outcome of these cases? And that's still to be determined. Obviously, healthy companies also are interested in the answer to this question.

For example, we have clients that are looking to see whether they will be M&A-type opportunities in this space. And looking to see the potential strategy pursued by these bankrupt entities will be a key part of assessing those opportunities. There's also the question of what impact bankruptcy would have on DeFi loans are decentralized finance loans for which debtors have posted collateral.

So this is an issue unlike some of the others that we've talked about that really is unique to the crypto world. In most existing DeFi loan protocols, borrowers post collateral that's valued well in excess of the amounts that they're borrowing. And such collateral is locked up on an automatic market

maker protocol via smart contracts. So this collateral isn't released until the conditions of the smart contract are fulfilled. Defaults under the smart contract result in immediate and automated collateral liquidations, so there isn't discretion really involved here, these contracts are set up so that triggers result in automatic liquidation of collateral.

Fast forward to a bankruptcy case, ordinarily, in bankruptcy, the automatic stay would prevent the exercise of remedies by a secured creditor through the application through the stay. But the stay may not be meaningful in this particular instance with DeFi loans because the liquidation occurs automatically. In at least one recent case, the company avoided this issue, the company that ultimately filed for bankruptcy by unwinding its DeFi position before it filed for bankruptcy. So that's an example of an issue that really is unique to this crypto industry in the crypto space. And it's still to be determined how it might play out in a bankruptcy scenario.

**Sam Gandhi:**

Following up on that last part, I mean, do you see that effect in terms of kind of creditors being willing to lend to folks in the crypto industry with these smart contracts where they can't really recover anything in the default because there's nothing left?

**Dennis Twomey:**

I think it cuts both ways a little bit, Sam. I think some creditors probably enjoy the fact that it can just all occur automatically and anonymously on the blockchain. There is more risk in a bankruptcy scenario, obviously. But overall, the way these are typically set up is that the borrower typically posts collateral of greater value, sometimes significantly greater value than the crypto that it's borrowing in return. And so typically, the lender is well positioned from a collateral perspective because it's over collateralized. And so ultimately, when the smart contract triggers the liquidation, in many instances, the lender is in good shape. And it's really the borrower who may end up getting stuck because its collateral is liquidated at a point in time, where it happens to be at a low point in value.

**Teresa Wilton Harmon:**

And let me just override quickly and note that general principles of commercial reasonableness, the general UCC requirements for foreclosing on collateral and closing out transactions don't just disappear in this space.

So parties can try to agree that this mechanism is commercially reasonable and enforceable, but there is room for discussion down the road.

**Sam Gandhi:**

Steve, beyond the few court cases that are out there. What are the other issues to consider in this landscape?

**Stephen Hessler:**

Building on Dennis and Teresa's comments there, especially interesting from a restructuring law related standpoint or the really core issues of value and valuation. And the methodology involved in both of those, perhaps stating the obvious, but probably the most important factor in any Chapter 11 case, at least in the United States, or any other in court insolvency proceeding in a foreign jurisdiction, is the concept of recovery. Who is getting what how is the pie being divided. Because if we're not sure what the size of the pie is, or what that pie is made of, to put it colloquially, it's a lot more complicated to figure out how to split it up and actually parcel out those recoveries. So some of the key issues in this space involve, for instance, our customers and other creditors entitled to have their claims paid in kind meaning or should they be paid their recovery in the same digital asset for which they contracted? Or do they have to? Are they required to? Or did they get the option to be paid in U.S. dollars, for instance.

A similar and interesting question is what is the appropriate date and methodology to use to determine customer claim amounts with regard to these assets? Typically, the bankruptcy petition date, and that just means the date that the case was started in court, that would be the most common date to use from a general perspective. But given pricing volatility in this specific space, customers, creditors, and equity holders may have a very distinct interest in arguing for the use of the confirmation date of a plan at reorganization, the claim distribution date or some other date that is significantly more favorable to them, perhaps, but unfavorable to other stakeholders.

The struggle likely will be about who gets to capture the valuer who has to bear the cost of price movements meaningfully in either direction. Those of us who are restructuring practitioners, we've encountered these issues a lot in the oil and gas space, for instance, where you can have meaningful price

movements during the pendency of a case. And this can lead to a really fierce and a really interesting battle about who gets to the benefit of the upside, especially if it becomes clear during the case that there's potential value to be recovered by equity holders who typically recover last in a restructuring.

To keep going, there's the related question that comes up in a lot of bankruptcies, which is where does the value itself actually sit? And what we mean by that is if creditors have claims against one specific entity but most or all of the value isn't in another separate entity, how is that aggregate value can be split up in a way that's fair, but also honors and preserves contractual expectations, such as those may have been? Again, this comes up in a lot of very large and complex Chapter 11 cases. But in crypto bankruptcy, specifically, there may be a situation where the creditors were one entity but the value is in another and maybe there was not here, because it's still an emerging and evolving industry, maybe there wasn't as much clarity as or understanding as there otherwise might be when you're dealing with sophisticated lenders with well-established entities. There may not have been as much clarity as to which entity they were lending against and understanding of these important concepts of corporate separateness.

**Sam Gandhi:**

We've been talking a lot about things that we see from a legal issues perspective, but what are you all hearing from clients? And what are the issues on their minds in the crypto industry?

**Teresa Wilton Harmon:**

I will say the clients are paying attention to these same things right now. I am hearing a greater awareness that cryptocurrencies and digital asset transactions are not all the same. Structuring and attention to legal detail matter. And people are thinking more about counterparty risk, and they're thinking ahead to potential bankruptcies in ways they did not before. Now, I think they recognize that it's worthwhile to analyze both legal risks and execution risks. And the people who do that can find the right digital asset transactions for their needs.

I'm also hearing about opportunities. Our clients want to access developing technologies and these new UCC rules to improve their risk profiles and to create new products. And we're working with pioneers who think this is a

great time to create something new, Sam, and with established market players too, who are entering the digital asset space really for the first time as it becomes more mainstream. So there's a real mix in the market right now, but they're all paying attention to these issues.

**Sam Gandhi:**

And Dennis, what are you hearing?

**Dennis Twomey:**

Yes, Sam, I think clients really in this space really are focused on types of issues that we've been talking about here today. You know, as one example, in light of the property of the estate versus customer property issue that I discussed earlier. Some of our clients are thinking about the potential insolvency of their transaction counterparties, and what counterparty insolvencies would mean for them. So we're helping these types of clients think through solutions that can help them better clarify that the property they're transferring to these third parties remain their property as a legal matter, such that a bankruptcy filing by their counterparties wouldn't affect their property rights.

I've also been thinking and talking to clients about claw-back risks. There's a question around whether customer withdrawals of crypto assets from a platform for example shortly before the bankruptcy filing by that platform can be avoided by a bankruptcy debtor or trustee in a subsequent bankruptcy in the same or similar ways that bankruptcy debtors and trustees can avoid other pre-petition preferential transfers to creditors at the expense of others. And this risk is particularly heightened, to the extent that there's a determination that the property is in fact property of the estate, thereby making these customers creditors of the estate, and they therefore were creditors prior to the bankruptcy filing so that withdrawals could potentially be deemed preferential payments of creditors.

And then there's also just at a high-level clients thinking through the potential consequences of all of these legal and regulatory developments we've been talking about and whether they might render some of these crypto businesses no longer viable. So that's a big question that I think still is evolving. You know, as Steve noted, I think some of these bankruptcies are really going to, in some ways, accelerate the maturity of this industry, because parties have to think through issues that they've maybe previously

haven't had to think about, at least not in the last couple of years when the markets have been going really well.

And finally, I would just say, as Teresa mentioned, our clients are very interested in potential opportunities here, and not just focused on legal issues and challenges. So many of our clients see the market distress as an opportunity for growth, acquisition, and possibly consolidation certainly in some of these businesses or subsets of businesses within the broader crypto industry.

**Sam Gandhi:**

Steve, where do you see this industry evolving?

**Stephen Hessler:**

From a bankruptcy law perspective? Certainly some of the issues that are being worked out in the courts today, the very fact of that ongoing evolution, that's really a hallmark of the bankruptcy process and bankruptcy law. It's always changing. It's always evolving. The issues of today end up establishing the law for the issues of tomorrow.

As folks may know, our present bankruptcy code actually dates back to railroad restructurings. And the resolution of those issues a century ago, you know, those resolutions still have massive implications for debtors and creditors today. Tracing through history up to the present, financial firms, real estate, oil and gas, cross border restructurings. And now dealing with crypto. This is what's really fascinating about being a restructuring lawyer. There's always new issues coming up, that have forward facing implications, and we really enjoy helping our clients react and respond and plan for that.

With respect to the crypto industry specifically, it's probably learning that the old adage amongst the crypto veterans was that "the code is law," by which they seem to mean that the code written by the software engineers was going to trump pre-existing laws and regulations. And it seems like there's widespread learning now that that adage isn't entirely true. The United States Bankruptcy Code foreign insolvency laws, U.S. state property laws these are also governing law in the commercial context. And so some clarity from our courts on how these cryptocurrency assets and cryptocurrency-related claims are going to be treated. That's certainly going



to help businesses and investors better structure their platforms and operations in ways that best protect themselves but also protect customers.

So I think, overall, this is still a really novel and innovative space. And we expect the industry will keep pushing boundaries in fintech, and it's going to make some really interesting work for all of us restructuring practitioners.

**Sam Gandhi:**

Teresa, let me end the podcast with a question to you, which is who in your view will be the survivors in this industry?

**Teresa Wilton Harmon:**

That's a great question. Well, Sam, I'm a finance and commercial lawyer. Right. So I think the survivors will be the ones who get the fundamentals right from the beginning, who build and look for a solid legal foundation. And for a solid value proposition. Those who understand the hidden legal and execution risks, and who use that knowledge to their advantage. And you pay attention to key factors like liquidity, counterparty risk, and default management along the way.

I think the winners will also be those who can think outside the narrow silos think outside the box. So our team at Sidley includes lawyers who can spot issues and solve problems across a broad spectrum of disciplines, not just finance, insolvency, and regulatory issues, but also tax energy, corporate derivatives, litigation, and international laws. This is really a head on a swivel moment. I think that investors who are awake and who are paying attention are really going to be able to seize the moment here and ride this new wave of regulations and developing laws.

**Sam Gandhi:**

We've been speaking with suddenly thought leaders Teresa Wilton Harmon, Steve Hessler, and Dennis Twomey about the crypto industry and how it's evolving. Thanks for being on the podcast all of you.

**Teresa Wilton Harmon:**

Thanks for having us, Sam.

**Stephen Hessler:**

Thanks very much. It was a pleasure to be here.

**Dennis Twomey:**

Great to be here. Thanks, Sam.

**Sam Gandhi:**

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