



**THE INFLUENCERS:
DIGITAL TRANSFORMATION**

**TRANSCRIPT
PROF. ULRICH SEGNA**

Leo von Gerlach	Hello everybody and welcome to another edition of The Influencers, our podcast conversations on digital transformation and law. I'm Leo Von Gerlach and with me today is Ulrich Segna. Ulrich Segna is one of the standout professors at the EBS School of Law and chairs the Civil and Commercial Law Department of that excellent school. Ulrich has a very specific and distinguished reputation for his research regarding the laws for securities and other financial instruments and he has close ties with the finance community in Frankfurt and beyond. Welcome Ulrich.
Ulrich Segna	Thank you for inviting me.
Leo von Gerlach	Let me start perhaps with your personal story, Ulrich. How did you grow into this field of securities and financial instruments more broadly, and how did you come to tie this to the broader world and the emerging world of digital finance?
Ulrich Segna	<p>I came in touch with securities and financial instruments for the first time in the 1990s when I was a research assistant at the University of Osnabrück as a chair of Theodore Baum's, who also served as a supervisor of my PhD thesis. At that time, capital markets law was not as developed as today but had established itself as a separate field of law. My interest in securities law increased significantly when I joined, after passing my Second State Examination in 2001, the financial markets department of the Association of German Banks in Berlin for 15 months, and it was there where I drew my attention more closely to intermediated securities, gaining more knowledge about this topic, and laying down the basis of what later became my postdoc thesis about intermediated securities.</p> <p>And after moving to Frankfurt, Luxembourg, and one year in Heidelberg, I joined the EBS Law School in Wiesbaden - we are one of the three private law faculties in Germany - and in fact, the law of security is still my main field of research and given that in my postdoc thesis, I have dealt extensively with the dematerialization immobilization of securities, it is no surprise that the recent developments, the discussion about digital assets is for me of great interest as well.</p> <p>And yes, I have close connections to the financial community, to law firms, stock exchanges. CSDs. Since a couple of years, I'm a member of an expert group dealing with custody law. Why? Because I'm convinced that if you want to conduct excellent research in the complex field of capital market law, you'll need practical insights. And in any case, being in a constant exchange with practitioners like you, with law firms like Hogan Lovells, is an important aspect of my life and makes my profession even more fascinating.</p>
Leo von Gerlach	So that's interesting. You kind of have a long track record of working on the edge between tangible and non-tangible assets, material and dematerialized assets. Is that something that you also draw from your conversations with the

	financial community, that this is an area they are interested in? So how does this specific field of research resonate with your community?
Ulrich Segna	Yeah, well, there is, of course, a huge practical interest in the questions I've been dealing with since a couple of years now, especially with regard to intermediated securities. The German law of intermediated securities is closely connected to traditional civil law concepts, property, possession, indirect possession and so on. But given that, in modern financial markets, there are no physical securities anymore, but instead we have global securities, we have electronic securities. There is a kind of clash between practice and theory. The theory is quite a traditional one, dealing with traditional civil law concepts, as the practice is completely different. So, this is quite fascinating. In practice, we always see many problems and this makes my work so fascinating.
Leo von Gerlach	All right, let's stay with that point for a moment. So, you said there is a specific law for securities and that used to be materials, paper materialized securities, and now we have new law on electronic securities, and that there is a lot of discussion in the community about the novel concepts that this law will bring. Perhaps you taught us a little bit about the specifics of this new law on electronic securities and why that is so relevant.
Ulrich Segna	<p>Well, the Electronic Securities Act has entered into force almost three years ago in 2021 and its practical relevance is extremely high. Why? Because the German legislator for the very first time has opened German law for electronic securities, that means securities that are issued by way of registration in a register and are not represented by paper certificates anymore. And in practice, there was an urgent need for a specific legal framework for electronic securities, especially with regard to tokenized securities, securities issued natively on a blockchain or other distributed ledger technology. And given the rapid development of new technologies, such as blockchain technology in the past years, and given the strong competition we see between the various legal systems in Europe and across, there was a huge pressure on the German legislator to come up with legal rules covering the private law issues of crypto securities, because as long as an appropriate legal framework was missing in Germany, there was an unacceptable degree of legal uncertainty and transactions were too risky, costly or even impossible. So, consequently, in its justification of the German Electronic Securities Act, the German government has made clear what's the main objectives of this legal act are modernizing, the German securities law, supporting Germany as a financial center, ensuring legal certainty by setting up a reliable legal framework for electronic securities, protecting investors, and improving and protecting transparency and integrity of the financial market.</p> <p>However, if we want to make a proper assessment of the German Electronic Securities Act, we should take three points into account. The first point is, the German Electronic Securities Act is not a pure blockchain law. Indeed, it forms a legal basis for the issuance of DLT based securities, crypto securities, but it also allows to issue electronic securities with the intention to integrate them into the traditional system for intermediated securities operated by Clearstream banking again. So, therefore, the proper understanding of the German Electronic Securities Act, one distinction is essential; the distinction between crypto securities on the one hand and central registered securities on the other hand. The second point is that the German Electronic Securities Act does not call for a complete dematerialization of shares and bonds. It simply offers an option to issue us. They can issue securities, shares and bonds in electronic form, but they can also stick with the traditional form of issuing securities in paper form. And the third point is the approach taken by the German Electronic</p>

	<p>Securities Act is a quite traditional one or let's say it's conservative, in contrast, for instance, to the Swiss DLT act, it has not introduced a new category of financial assets into German law. Instead, the traditional securities law framework is maintained. Moreover, the legislator has even refrained from introducing a new terminology or a new theory for the issuance of electronic securities. So, an electronic security is simply a security in the traditional meaning with the only difference that there is no piece of paper anymore. And the main pillar of this concept can be found in section two of the German Electronic Securities Act. This section states that an electronic security is deemed to be a thing within the meaning of our German Civil Code.</p> <p>So, there is no tangible physical thing at all. But the law says that by way of legal fiction, that such a security shall be treated as such, and in the literature, it is even argued that the concept of possession can be applied to electronic securities, although there is no tangible object at all.</p> <p>So to sum up, many colleagues, scholars and lawyers have praised the German Electronic Securities Act for being innovative or even revolutionary. Well, to be honest, I do not agree with this assessment. This act is not a revolution. It is a good example of path dependency in German law.</p>
Leo von Gerlach	<p>So, before we go to that last point you made about this kind of emerging new concept of civil law, let's perhaps stick for one more minute with the Electronic Securities Act. You explained that there are just two types of electronic securities. There are those centrally registered - in a sense reflecting the old world but in an electronic form - and then there is a new additional form of electronic securities, which is blockchain based which we may call crypto securities or the like, that are decentralized organized. What are the main differences of these two types of electronic securities, one blockchain based and what not and how is that differentiation relevant?</p>
Ulrich Segna	<p>The main difference is simply in what kind of register can the securities be found. So, the main line is simply the register. Central registered securities are registered in a centralized register, driven by Clearstream or driven by a custodian. So, central registers are described by the fact that they shall be used for central securities, and there are no further requirements for central registers. The legislative reasoning states that a special trust in the integrity of the security certificate is replaced. In the case of the central register by the special trust in the integrity of the Registrar. Well, in contrast, crypto securities are registered in a decentralized register, operated by the issuer himself, or an entity designated by the issuer and crypto security registers must be maintained on a system which has to meet specific requirements laid down in section 16 of the German Electronic Securities Act. Electronic securities on a crypto register must be recorded and stored in a manner protected against unauthorized modification, so, and distributed ledger technologies such as blockchain, it's generally considered to be suitable to comply with these requirements.</p> <p>However, from a civil law perspective, if you look at the German Electronic Securities Act from a specific civil law perspective, it is not the distinction between central registers view with securities and crypto securities, which is the most important. Much more important is the distinction between the two types of registrations: the collective registration on the one hand and individual registration on the other hand.</p> <p>Let me shortly explain this distinction. Collective registration means that not the investor himself, but a CSD or a custodian is registered in the register as the holder of the securities. So, we have a CSD or a custody holding and administering the securities for the investors, that's the CSD or the custodian is</p>

	<p>not a beneficiary himself. In contrast, individual registration means that the investor himself is registered in the register, and is that the holder of the securities.</p> <p>Well, why is this extinction so important from a civil law perspective? The reason is that we have two different types or two different sets of rules when it comes to dispositions. In the case of collective registration, transfers take place outside the electronic register, in accordance with the rules governing intermediated securities, that credits and debits being made on securities accounts, but the register itself remains unchanged in any case. And this is completely different in the case of individual registration. Here, we have bona fide acquisition, and there is one underlying guiding principle: transparency. So, electronic register must be transparent. Each transaction has to be reflected by the register and transfers outside the register are to be held invalid.</p>
Leo von Gerlach	<p>So, that's interesting. We just extrapolate from different types of securities – individual, collective - a certain principle's emerging. So, leading me to the question, if we now take a wider lens, because there are financial instruments but, more broadly, digital assets that do not qualify as electronic securities, but still, they may be valuable assets in a digital form. Do you see any new type of civil law principles emerging in the context of these new type of assets, these assets that may be on a blockchain, sometimes may not be on a blockchain, but represent value in a digital form?</p>
Ulrich Segna	<p>Yes, indeed. Well, at the moment, the problem is that the German Electronic Securities Act is limited to bonds and shares. It does not cover digital assets in general. So, we have no private law rules in German law covering digital assets in general, and this creates a significant degree of risk and uncertainty. Well, however, there are discussions underway of covering digital assets in general as well. And we also see on the international level various initiatives, for example, in 2023, in the last year, UNIDROIT in Rome, The International Institute for the Unification of Private Law, has adopted a set of principles for digital assets, which might serve, let's say, as a guideline for national legislators and these principles cover only private law issues and in particular, proprietary rights. And in different countries, we see initiatives as well. Very interesting to see development in England, for example, a couple of months ago, the Law Commission of England and Wales has made a proposal to adopt a bill And what is the aim of that bill? The aim is to remove any doubt that there are only two categories of property. Well, the English law distinguishes between things-in-action and things-in-possession, and English courts are reluctant to recognize that crypto tokens and similar kinds of digital assets can be qualified as property as well. And the aim of the initiative of the Law Commission in England and Wales is simply to make clear that under specific circumstances, crypto assets can be qualified as property as well. So, what we can see on the international and national level we have we have several initiatives and in Germany, we have this discussion as well. Many colleagues, in particular, the colleague Sebastian Umlauf, from Marburg, has made a proposal to adopt specific rules for crypto assets in German law.</p>
Leo von Gerlach	<p>And just to conclude this, would that be something that you'll support, or would you plead for a other direction by the legislator to be taken in the field of civil law regulation of crypto assets?</p>
Ulrich Segna	<p>Well, I would oppose this strongly. I don't think that we need a specific legal act for crypto assets. What might be sufficient is to add the German Civil Code to</p>

	adopt specific rules for crypto assets, such as non-fungible tokens. I think that's sufficient. So, I strongly support this idea.
Leo von Gerlach	Ulrich, thank you so much. In addition to be just very insightful about electronic securities and digital assets more broadly, I think it's a terrific advertising of the wider field of legal considerations with this new form of asset class, so, highly inspirational. I'm grateful and thankful for this interview and of course, I'm grateful for everybody to join in and I hope you tune in again next time for our next edition of the influences. Until then, goodbye, have a good day