

Legal Plus Summit 10:15am - 10:35am

# **Crypto & Blockchain Disputes in Japan — What's Coming in 2023**

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# Introduce myself

## So Saito



So Saito serves as an executive member/advisor of blockchain/metaverse organizations. He uses that knowledge that he gains as an executive member/advisor to assist his international and domestic clients specifically in blockchain and fintech, VR/AR, venture finance, etc.

## Experience

1997 Tokyo  
Bachelor of Laws, the University of Tokyo

2005 New York  
Master of Laws, NYU School of Law

# Types of Disputes regarding Crypto Asset

01

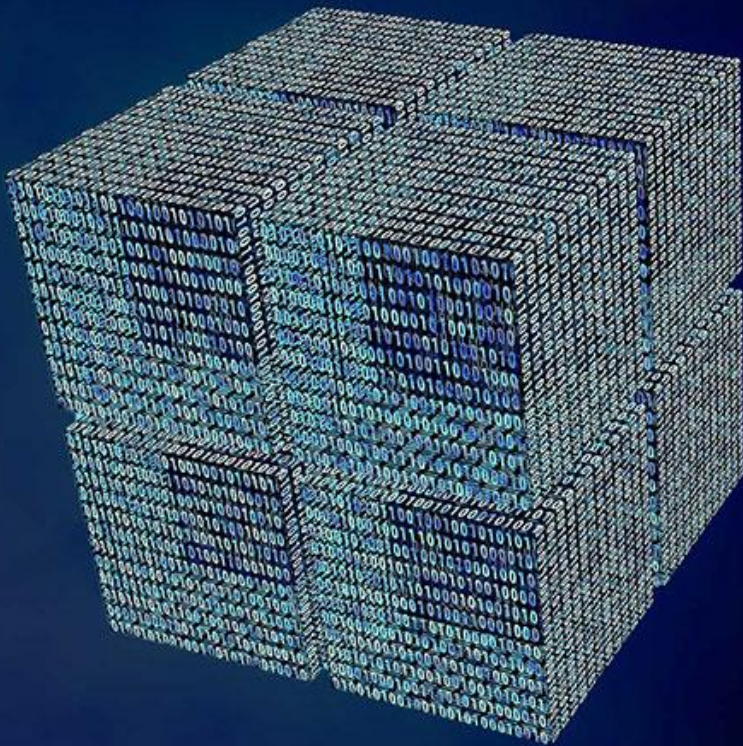
Disputes when crypto asset exchange is hacked or bankrupt

02

Disputes between exchange and user other than the above 1

03

Disputes in hacking, scam, and other criminal cases















# 1 Dispute when Crypto Asset Exchange Hacked or Bankrupt

## 1.1 Role of Crypto Asset Exchange

An exchange is a kind of brokerage security firm and a private stock exchange.

Exchanges offer the following kinds of businesses

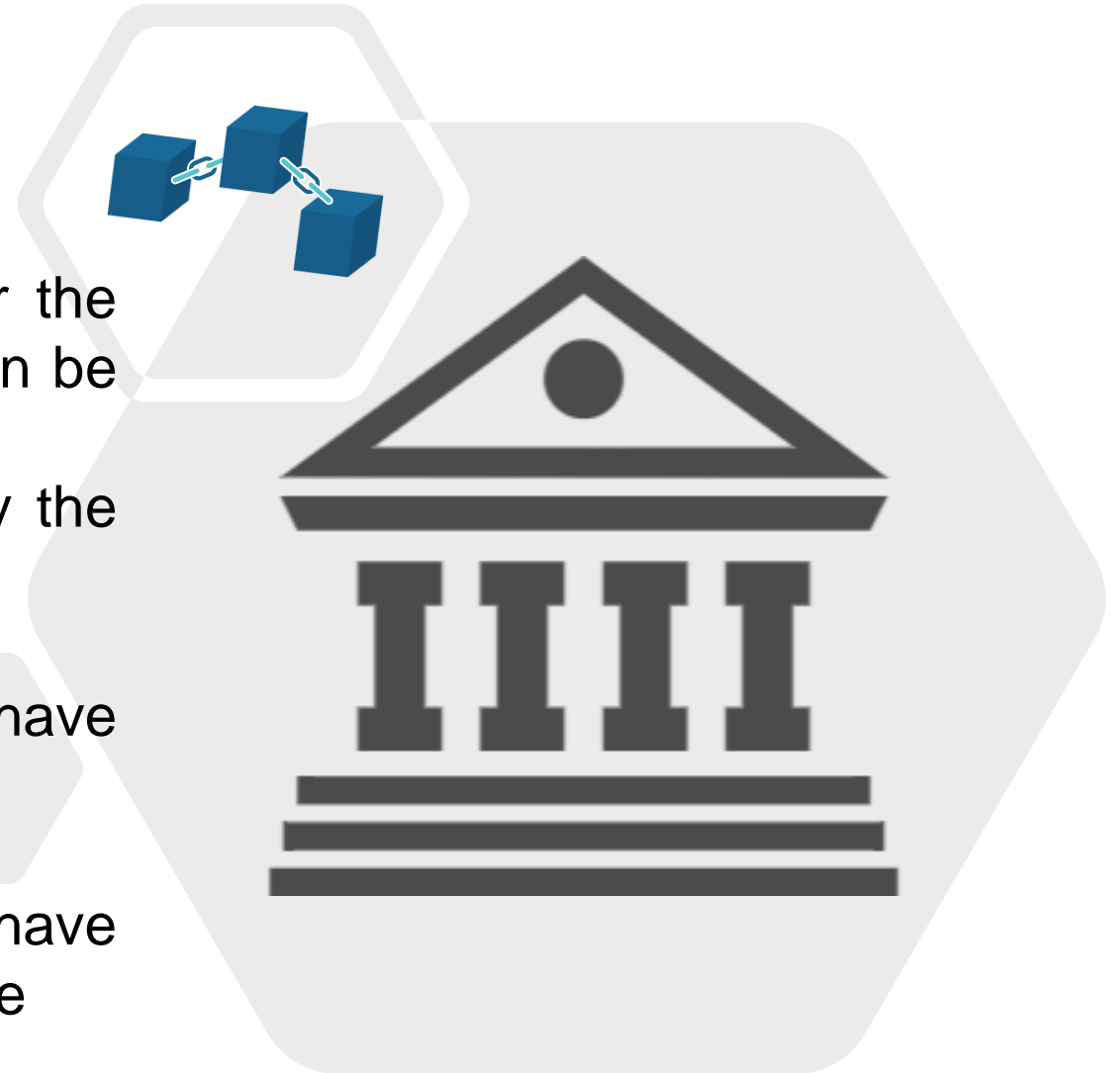
-    **Buying and selling crypto assets to users**
-    **Intermediary for the buying and selling of crypto assets between users**
-    **Custody of crypto assets**
-    **Leveraged trading**

## 1.2 Exchanges and Blockchain

Crypto assets are issued on the blockchain.  
The use of exchanges is not mandatory for the purchase or storage of crypto assets and can be done by users only.  
However, the use of exchanges can simplify the process.

Some exchanges have been hacked and/or have become bankrupt. Some are not safe.

Blockchains themselves (for major crypto) have never been hacked or bankrupt. They are safe



## 1.3 Exchange Hacking, Bankruptcy, and Disputes

### 1.3.1 MT. GOX Bankruptcy

Mt. Gox was hacked in 2014 and eventually went to civil rehabilitation.

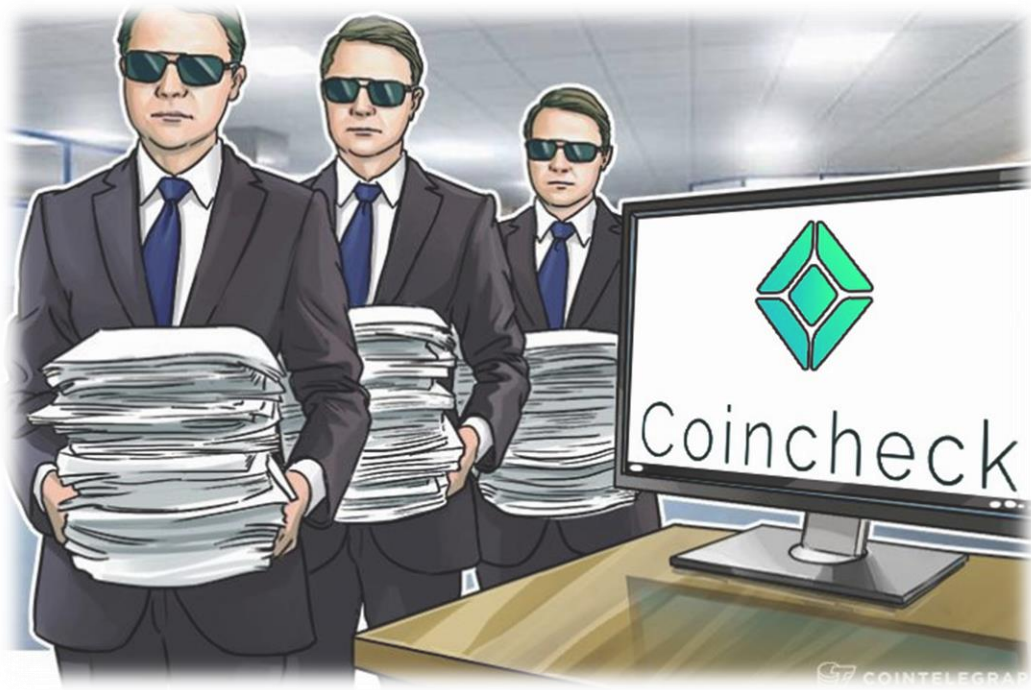
A lawsuit by a user to claim recovery of Bitcoin based on "Ownership Right of Bitcoin."

- Ownership of Bitcoin is denied
- There was no segregation of assets in Mt. Gox. If there was segregation, whether ownership right is allowed is still uncertain (although most think the answer is no).



出典 : [\(The Verge記事 "Where is our money?"\)](#)

## 1.3.2 Coincheck Hacking



出典：[\(COINTELEGRAPH記事より\)](#)

Massive hack in February 2018.

The hacking loss was covered by internal reserves, etc., of Coincheck. However, withdrawals stopped for about 2 weeks.

Some users sued Coincheck for compensation for the suspension of withdrawals.

→ Denied because (a) there was an exemption clause from liability for temporary suspension of services in case of accidents, (b) the clause does not violate the Consumer Contract Act, and (c) the suspension was reasonable for investigation, etc.

### 1.3.3 FTX Japan

FTX, a parent company of FTX Japan, filed Chapter 11 in the U.S. Chapter 11 has an effect globally.

FTX Japan is currently suspending withdrawals due to FTX Japan using FTX's payment system etc.

Japanese law (effective from 2020) requires the segregation of all users' deposit assets in custody. Japanese law also gives the right of priority payment to users. FTX Japan announces the users' assets are actually kept in segregated custody. Therefore, there would be no loss to the user.

The media states that FTX intends to sell FTX Japan to a third party. If users of FTX Japan are protected, it can sell FTX Japan in more value.





## 2 Disputes between Exchanges and Users



There have been many cases where users' IDs and passwords have been hacked.

Deposited crypto assets have been withdrawn without the user's permission.

Some users use exchanges by insisting that the exchanges must have a more robust system to prevent withdrawal even if there is an ID/password hack such as the mandatory requirement for 2-step verification.

In most cases, the user's claim is denied on the grounds of an exemption clause in terms & conditions, and the exchanges obey laws and industry standards, etc.

However, it could be different if there is some negligence on the part of exchanges or if exchanges did not obey regulations or industry standards.

# 3 Disputes in Hacking, Scam, and Other Criminal Cases

## 3.1 Example of Fraud Cases

There are many SCAM, hacking, and fraud related to crypto.

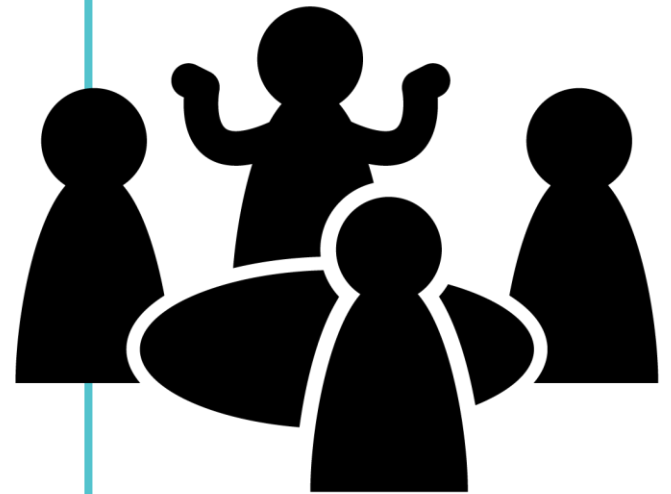
- a. A user whose account name is very similar to that of a celebrity tweets, "I'm giving away bitcoins to people who loves bitcoins. If you send me bitcoin, I'll send back you twice bitcoin to the sender's address". And many other people add comments to the tweet, "I received it! Thanks!" etc.
- b. Solicit crypto investment with the promise of quite a high dividend (such as 100% annual dividend).
- c. Users' ID/password of exchange or users' own wallet being hacked.

## 3.2 Characteristics of Crypto Asset Disputes

We are sometimes requested to conduct litigation, criminal prosecution, and repossession of stolen crypto assets.

It is usually quite challenging to get back crypto assets if the opponent is a professional hacker or a professional fraudster.

- All records of transfers are kept on the blockchain.
- Multiple and complex transfers, use of anonymizing technology called mixing services, use of the dark web, international, etc., making it very difficult to trace who finally has hacked crypto assets.
- Blockchain address is only a digital character. It is often difficult to match a blockchain address to a physical person.
- Exchanges in Japan, the U.S., the EU, and other countries verify the identity of their customers and respond to investigative inquiries. However, there are exchanges with insufficient identity verification as they insist that they are not subject to any country's regulations.



**On the other hand, if it is NOT a professional criminal, it might be recovered through a lawsuit, foreclosure, settlement, etc.**

There are cases of breach of trust, breach of contract, etc.,

→ Sony Life Insurance's embezzlement of ¥16.8 billion (subsequently converted to bitcoin) was recovered in full. Instead, the bitcoin conversion resulted in the recovery of more than the total amount.

→ Exchanges usually respond to a seizure. There have been cases in which our firm has seized user accounts of exchanges.

→ Theoretically, it would be statutorily impossible to seize crypto assets in one's wallet. It can only be done by indirect compulsion, not by real estate, movable property, or claims. However, in many cases, a defendant may make a voluntary payment.

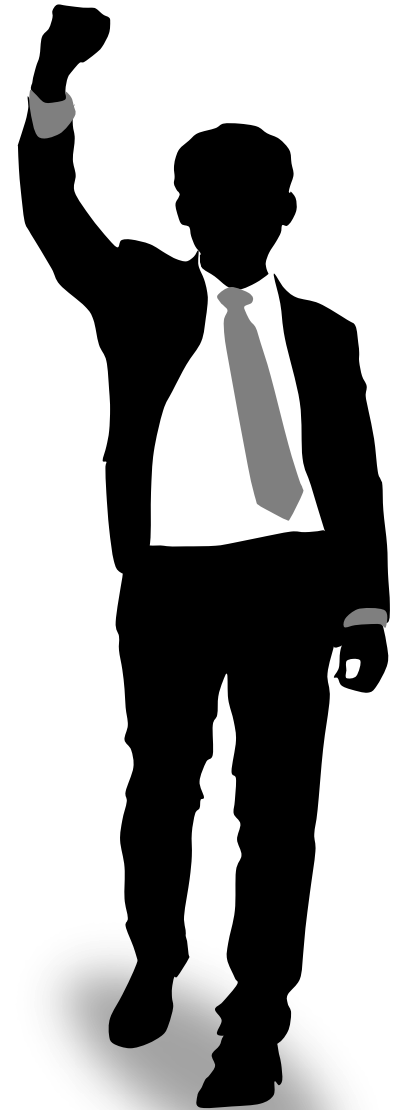


### 3 Prediction of 2023

Japanese laws and regulations have been stringent since 2018 following the Coincheck incident.

Users of FTX Japan will be protected even though the bankruptcy of FTX. There is no need to amend the Japanese regulation.

Other countries are likely to make stricter crypto regulations, which could be relatively advantageous to Japanese companies.



# Thank You

<https://innovationlaw.jp/en/>



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