

Elad Finkelstein**“Smart” Contract Law – Technological Advances
Vs. Regulatory Regimes**

This study opens a window into blockchain-based smart contracts and their legal regulation, specifically in contract law. Blockchain is a decentralized platform that involves no central market entity. Global investments in blockchain technology are enormous, and on the rise in many areas in both the private and public sectors. One of the most prominent applications of blockchain technology is in smart contracts, which are agreements constructed in computer code and stored on a distributed database. Smart contracts automatically trigger the execution of electronic instructions when pre-encoded conditions are satisfied.

Transactions performed through smart contracts offer many advantages. The distributed interaction that takes place on the blockchain platform eliminates the traditional need to rely on a centralized entity or intermediary to guarantee the transaction’s execution. Furthermore, the automatic execution of the agreement creates certainty, which leads to high levels of performance and reduces the resources invested in the transaction and other transaction costs. Alongside these benefits, the use of smart contracts also raises concerns. For example, automatic execution of smart contracts disregards situations in which contract enforcement is not desirable. Furthermore, drafting smart contracts also involves many challenges.

The potentially enormous scope of implementation of smart contracts and the difficulties in their application underscore the relevance and significance of legal regulation. Within the context of contract law, the common standpoint in the literature is that prevailing law already has an appropriate legal foundation that supports the application of smart contracts. This article argues that this legal foundation is inadequate, and in some cases promoting the use of smart contracts requires adjustments to prevailing law.

Beyond the contribution of this article to the literature on the legal aspects of smart contracts and blockchain technology in general, it offers insights on this issue from the perspective of Israeli law.