

BOT CONTRACTS

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In this Article, we explain why the transactions commonly known as “smart contracts” are better understood as “bot contracts.” Taking an interdisciplinary approach, we show why the “smart contracts” moniker is misdescriptive in two important ways. First, these transactions are automated, not “smart.” Second, they do not afford parties many enforcement rights and defenses that one expects from common law contractual relationships. To fully understand these transactions, it is important to appreciate how the term “smart contracts” differs from the what the technology delivers. Our review of the technology explains that these transactions have tremendous practical utility in reducing risk and avoiding the uncertainty and expense of seeking judicial enforcement. However, the electronic processes that occur in this category are not smart, in the sense of being thoughtful, creative or even amenable to change. They are programmed to follow preset instructions and execute automatically. Once the conditions for performance under a smart contract occur, performance cannot be stopped. Because these transactions are automated, they lack features and defenses available to those who enter into typical contractual relationships. Common law contracts are sets of promises or obligations that may be enforced by a court. Once a smart contract is set in motion, no person or court can reverse the transaction. In this way, smart contracts differ fundamentally from traditional contracts because they leave no room for judicial intervention. By design, they evade the risk of what a court may do in fashioning a remedy. Courts have no power to set the transaction aside if it is predicated on fraud or if a common law defense would, under other circumstances, provide a reason to void the transaction. Although the term “smart contract” appears to have taken hold, we propose that these transactions are better thought of as “bot” or “automated” agreements. Reframing these transactions in this way would reset expectations in line with what the technology can deliver. Adopting this preferential terminology will send a strong informational signal that avoids misrepresenting the abilities of these agreements and more accurately communicates that they execute automatically and eliminate both the risks and benefits that accompany traditional common law contracts.