

SYMPOSIUM

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The LEGAL Landscape of the Sharing Economy

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I

INTRODUCTION

To most public interest-minded law students and lawyers, practicing transactional law is not an obvious path to saving the world. After all, the majority of transactional lawyers work for firms that grease the wheels of the very economic system that is causing widespread ecological and social distress.

Seeking 500,000 Sharing Lawyers

Every community in the U.S. will soon need “sharing lawyers,” “grassroots transactional lawyers” or whatever you may prefer to call these new legal specialists. By our estimation, with around 30,000 incorporated towns and cities in the U.S., we will soon need at least 100,000 sharing lawyers. As the sharing economy becomes the predominant economic force in our society, all transactional lawyers in the U.S. (approximately 500,000) should consider transforming the focus of their practices to smooth the way toward a more sustainable economy. No matter how you do the math, the sharing economy offers a huge opportunity to new and experienced lawyers alike.

Now transactional lawyers are needed, en masse, to aid in an epic reinvention of our economic system. The world’s economic and ecological meltdowns demand that we now redesign our livelihoods, our enterprises, our communities, our organizations, our food systems, our housing, and much more. This glorious reinvention has already begun, and many refer to it as the “sharing economy,” the “relationship economy,” the “cooperative economy,” the “grassroots economy,” or just the “new economy.”

Transactional lawyers manage economic activity and relationships, which puts them in a good position to work on the reinvention of our

economy. Transactional lawyers write contracts, form business entities, structure transactions, manage and allocate risks, and navigate the worlds of tax, business regulation, land use, and labor law. Sharing lawyers do all of these things, but we do them for the exploding numbers of social enterprises, cooperatives, urban farms, cohousing communities, time banks, local currencies, and the vast array of other unique organizations arising from the sharing economy.

The work and legal questions faced by sharing lawyers are uniquely challenging, and they tell us some important things about both our economic system and our legal system. To understand what is unique about the practice of sharing law, it is important to first understand what is unique about the sharing economy.

II

THE SHARING ECONOMY

Although it is hard to encapsulate the qualities of this new economy, it generally facilitates community ownership, localized production, sharing, cooperation, small scale enterprise, and the regeneration of economic and natural abundance. To achieve this, the new economy involves different ways of meeting our needs, participating in production, and transacting with each other.

Sometimes, the best way to picture the sharing economy is to list the phenomena and practices that currently comprise it:

- Cohousing communities
- Community gardens
- Social enterprise
- Community-owned enterprises
- Shared commercial kitchens
- Creative commons licensing
- Car sharing groups
- Ecovillages
- Local currencies
- Barter networks
- Time banks
- Gift economies
- Grocery cooperatives
- Worker cooperatives
- Community-supported agriculture
- Community-supported kitchens
- Credit unions
- Community land trusts
- Housing cooperatives
- Childcare cooperatives
- Renewable energy cooperatives
- Tool lending libraries
- Coworking spaces
- Collaborative consumption

The sharing economy is not a top-down solution, meaning that it will not be imposed by a set of legislated policies. We also do not

need to wait for a large organization or company to offer the solution to us. The sharing economy is being built from the ground up by every individual and group that chooses to begin consuming, transacting, or making a livelihood in a new way.

For each of us, individually, it means a very different plan for our lives. Most of us had a plan for our lives that looked something like the American Dream. We expected to grow up, get a good job, and make money to buy all the things we need. Usually, this involved owning one or two cars and a house full of every appliance, tool, and item we might need. If we needed something, we would go to the store and buy it. If we accumulated too much, we would rent a storage unit. We would try to max out our contribution to our retirement account so we could accumulate a big enough pile of cash to be comfortable when we retired.

Now we know that our original vision was based on the flawed assumption that the economy could grow continuously. The reality is that we have already used the planet's resources faster than they can be replenished, and we have built our current economic system by creating an ever-widening gap between the rich and the poor. That means that the new economy that we build must not just be *sustainable*, it must now *regenerate* the economic and ecological abundance necessary for everyone to thrive again.

It means that every single one of us must adopt a new plan for our futures. In fact, the sooner we can let go of our original plans, the greater the likelihood that we will transition gracefully to a viable new economy.

One way to understand how the new economy works is to look at three components separately: consumption, production, and exchange.

A. Consumption

1. Our Needs: The Explosion of an Access Economy

In the future, we might look back and gently laugh at the way we live now. The way we presently participate in consumption is by attempting to buy and own everything we need. We work long hours because we strive to own a car, a house, and so on. But from the standpoint of wise resource use, individual ownership is not the most efficient or easiest way to meet our needs.

The sharing economy presents us with a viable and necessary alternative: we can have *access* to many things that we need without having to *own* them all by ourselves. Our right to access something

will derive from a variety of new relationships—we may have an agreement to borrow or share an item; we may be members of a group of friends, a cooperative, a nonprofit, or a service that gives us access to that item. Tool lending libraries, borrowing and lending, car-sharing clubs, and shared ownership will be the new norm.

In 2008, with a deep conviction that sharing would be good for society and our planet, Janelle wrote a book called *The Sharing Solution: How to Save Money, Simplify Your Life & Build Community* with attorney Emily Duskow. The book surveyed ways that sharing can viably meet our needs, and it provided practical and legal tools for sharing in realms such as housing, food, work, household goods, transportation, and family care. Little did we know how quickly sharing would become a key component in society's effort to rebuild a resilient economy.

On the heels of *The Sharing Solution* came the launch of shareable.net, a true hub of information about what is happening in the sharing economy, the realm of consumption, and far beyond. Then came Rachel Botsman's and Roo Rogers' book *What's Mine is Yours: How Collaborative Consumption is Changing the Way We Live*, and Lisa Gansky's *The Mesh: Why the Future of Business is Sharing*. Both books looked at the explosion of businesses and organizations that allow us to meet our needs through sharing, with a particular focus on the power of technology to enable this revolution in consumption.

It has since become nearly impossible to keep up with what is happening in the realm of the "access economy," "collaborative consumption," and "the peer-to-peer" or "p2p" economy. There is a countless list of groups, communities, organizations, businesses, and websites designed to facilitate sharing. Needless to say, sharing is rapidly being embraced as a way to meet our needs.

2. Our Land: Toward Collective Management

This shift from an economy of ownership to an economy of access is particularly powerful in how it will change our relationship with a commodity, like land. Today, land and housing tend to be expensive and they are treated just like any other investment—something to buy and to extract the maximum value out of it as quickly as possible. Many individuals build their financial security around their investment in real property, and the market creates an incentive to exploit and degrade land—we develop it to its most marketable use, not to its most socially or environmentally beneficial use.

The shift to an access economy will not only lower what individuals pay for housing and land, it will likely create more sustainable structures for managing land and housing. We might gain the right to long-term use of land, but not the right to sell it and extract all equity from that sale. Land would be managed by cooperatives and land trusts that ensure that the land is used for the benefit of nature and communities.

B. Production

1. Our Work: Toward a Post-Jobs Economy

In many respects, it is easier to re-imagine how we take part in consumption than to rethink how we take part in production, particularly when it comes to our labor. Rethinking our participation in labor is scary because it relates to our jobs, something we are fearful of losing. But the reality of our changing world is that jobs may no longer be the way that the majority of us make our productive contribution to the world. On one hand, jobs can be nice: They create a somewhat reliable structure through which we can be productive and earn sustenance (usually in the form of money). Unfortunately, jobs are only reliable until the moment they disappear. At present, jobs are becoming increasingly scarce.

Our society's reaction to the scarcity of jobs is even more disempowering. Governments and nonprofits spend millions on setting up job fairs and resume writing workshops as if that could somehow address the fact that there are not enough jobs to go around. If anything, it makes things worse by making people feel that a personal flaw prevents them from getting work.

The inherent problem with focusing on jobs is that jobs entail relying on someone else to create the work opportunities for us. We must fit ourselves into the requirements of whichever job we are lucky enough to get, whether or not that job is how we would like to use our time and skills and whether or not we subscribe to the mission of the company we are serving. The person providing our job does not necessarily have our, or our community's interests, in mind. Providing a sustainable livelihood is probably not the employer's primary goal.

As described further below, in the new economy we will shift away from our reliance on jobs that others create for us and toward livelihoods that we create for ourselves.

2. *Our Capital: Toward a Post-Wall Street Economy*

Another way that people participate in production is with their capital. Many things we do require a lot of investment of resources up front—starting farms, building homes, installing solar, and so on. The current economy generally offers us only one way of contributing capital to projects and enterprises, and that is through a speculative casino known as Wall Street. Investing our money in Wall Street generally means that our wealth and resources leave our communities and contribute to the, oftentimes destructive, work of large companies.

In the new economy, we will develop ways to keep our resources local using our capital to support projects that benefit our communities and ourselves. As described below, the primary barrier to this tends to derive from securities law.

3. *The Sharing Economy and the Blossoming of New Enterprises*

Sharing is the key to an economy where everyone can make a livelihood through a combination of their own endeavors and cooperative enterprises. Many people might react to such a statement by thinking, “Yes, but not everyone is cut out to be an entrepreneur.” This statement is only true if you think that entrepreneurs must be rare individuals capable of tireless work, fierce competition, and the ability to impress venture capitalists. In our highly competitive economy, dominated by large businesses, this certainly *is* true of most successful entrepreneurs. But it does not have to be true in an economy based on sharing and relationships. In the new economy, entrepreneurs will be successful based on the relationships they build with others, not on their ability to compete with others.

To fully envision how this works, it helps to adopt a more expansive concept of *enterprise*. Think of an enterprise as any productive activity that could bring us sustenance, either directly or through cooperation or exchange with other people. In the new economy, each person will likely be involved in multiple enterprises, many of which will not look like a typical business:

- **A sharing enterprise:** A sharing enterprise is one aimed at sharing and offsetting the costs of ownership and maintenance of an item, and it is not an enterprise aimed at making a profit. For example, a group of residents in an apartment building may form an association to share ownership of a few cars.

- **Nano-enterprise:** Anything we do for others could be considered a nano-enterprise if the result is that the activity ends up providing for us in some way. These days, many people are finding little ways to casually swap with friends and neighbors, do favors for money, and so on. A woman lets her neighbors use her washer and dryer, in exchange for food and other favors. A jam enthusiast makes thirty jars of jam and sells them to her friends, or uses them as a currency for exchange. The first woman has not started a laundromat and the second has not exactly started a full-blown jam factory; yet, because of the valuable relationships they maintain, these nano-enterprises do provide for the women.
- **Producer cooperative enterprise:** Producer cooperatives can harness the nano-entrepreneur in all of us by aggregating and marketing the products of multiple small producers. For example, a bread producers' cooperative could purchase bread from twenty home bakers (in states where home baking businesses are legal) and sell the bread at a local farmers' market. The baker members can take turns staffing the farmers' market booth and, in this way, each one's business can become viable through joint marketing and selling efforts.
- **Worker cooperative enterprise:** Worker cooperatives are businesses owned and governed by their workers. In many ways, worker cooperatives are like producer cooperatives, in that they give their members an opportunity to work and contribute to a fruitful enterprise. The difference is the relationship between the members and the cooperative. In the case of a worker cooperative, the members are regular employees, as opposed to independent sellers or contractors; however, in a producer cooperative, the members themselves may be businesses as opposed to individuals.
- **Consumer cooperative enterprise:** Consumer cooperatives could take many forms and sizes: a group of friends that pools money to buy pet food in bulk, or a much larger group that forms a grocery-buying cooperative that looks, on the surface, like a regular grocery store. In either case, the cooperative provides for its members by providing goods or services at cost, and it may keep costs especially low by involving members in the day-to-day work of the cooperative.

- **Social enterprise:** A social enterprise is an activity aimed at creating a social or environmental good and in doing so, also generates income or sustenance for those engaged in the activity.
- **Community-supported enterprise:** The community-supported enterprise model is well established in the realm of agriculture and it makes an increasing amount of sense for many kinds of businesses in an economy based on relationships. In the community-supported agriculture (CSA) model, a farmer and a group of customers form a relationship and agree to share a handful of things. These things include, to varying extents, the financing, bounty, and potential risks of farming. In a CSA's purest form, a CSA member generally pays the farm money at planting time, which gives the farmer operating capital throughout the year. In exchange, the CSA member gets a share of the harvest, which could mean a lot of vegetables in a good year or fewer during a bad harvest year. Creating such a relationship with several local businesses is a wonderful way for consumers to consciously involve themselves in creating a thriving local economy.
- **Community-owned enterprise:** Imagine that having a diversified investment portfolio could mean owning shares of fifty or more local businesses. What better way for a business to finance itself than to give local community members ownership shares? And what better way for each of us to grow our wealth—both personally and by contributing to the wealth and vitality of our local communities?

What makes all of these enterprises work and how can they truly provide for us? The answer is relationships. All of these enterprises can engage us in productive activity, and they provide for us in meaningful ways because of the relationships and agreements we have made with other people.

C. Exchange

The sharing economy opens the doors to a wide variety of exchange mechanisms. We currently rely almost entirely on dollars to transact with each other, which means that we are relatively helpless when we do not have access to dollars. For growing numbers of people, dollars are scarce, which leaves our communities feeling increasingly helpless.

But the fact is that our communities have a wealth of resources—people, skills, and tangible items—which we could use to provide for ourselves. We simply need an incentive system to promote the sharing of these resources. Dollars are basically an incentive system: I will weed your garden if you give me dollars. Dollars are a good incentive because I know that other people will be equally excited to accept those dollars in exchange for other favors.

Since dollars are essentially an incentive system, with no inherent value other than their exchangeability, the question becomes: what other systems could we adopt to share and exchange things of value? Imagine a person, who, unintentionally, created a currency used among his friends. He made certificates that his friends could give back to him in exchange for a massage. He gave them as gifts or gave them to friends in exchange for favors like a ride to the airport.

At what point does such an incentive system become a currency? The answer is in the word itself: when it began to run or flow, like a *current*. His friends began to trade the certificates among each other in exchange for other favors. Unlike dollars, the certificates are actually *backed* by something: a massage. (The U.S. Dollar, by the way, is no longer backed by anything.) The certificates have value not only because they can be exchanged for a massage, but also because they gained currency among a community willing to accept them as payment.

What this means is that dollars can be easily replaced. They can be replaced by casually-created currencies like the massage certificates, by more formal local currency systems, online barter networks, time banks, and a general culture of giving, sharing, swapping, and bartering.

D. The Four Platforms for the New Economy

Now, how do we make this new economy happen? How can we more fully adopt these new ways of meeting our needs, new kinds of enterprises, and new forms of exchange? The answer lies in the platforms we build, and as demonstrated below, *everyone* has a role to play in building these platforms.

One way of looking at the platforms is to break them into four levels. The following levels are not stages in a progression; rather they are activities that must all take place simultaneously to build a firm grounding for a sharing economy:

1. Level 1: Building Relationships for Casual, Spontaneous, and One-Time Transactions

At the first level of the sharing economy, we begin to build relationships with each other, resulting in casual and spontaneous transactions. These transactions can include things like:

- Borrowing a shovel
- Lending someone your car
- Running an errand for someone
- Giving a neighbor extra cucumbers from your garden

These things sound relatively simple, but we currently live in a world where people do not do them enough. Such transactions take place naturally within communities of people that know and care for each other. These things take place naturally among the neighbors in my apartment building, now that we all know each other and have spent time together.

Generally, we live in a society where we tend not to know our neighbors, much less think of them when we need a favor or have something extra to share. The challenge for all of us, now, is to build community in ways that will catalyze such transactions. A goal for everyone should be to dramatically increase the ways we share, borrow, and lend among friends and neighbors.

2. Level 2: Building Agreements

Casual and spontaneous favors and sharing will only go so far in meeting our needs, which is why we need to build *agreements* for sharing and transacting. Agreements create a relationship that we can rely on to meet our needs. Rather than casually borrowing a neighbor's vacuum, you and your neighbor might agree to regularly share a vacuum. That way, you can rely on the availability of the vacuum when you need one. In the sharing economy, we will all be parties to many more agreements. We may make agreements to:

- Exchange child care
- Co-own or regularly borrow a car
- Share office space
- Barter for goods or services

3. Level 3: Building Organizations

Building organizations is a key component of the sharing economy, because organizations generally endure even while individuals come

and go. In that respect, organizations become lasting institutions in our communities. This is especially important in creating a resilient economy in a world where people are highly mobile.

An example of an organization is a neighborhood group formed for the purpose of sharing cars in the neighborhood. The organization can make provisions for people to join and leave the organization as needed. Other examples of organizations might be:

- Cohousing communities
- Food cooperatives
- Coworking spaces
- Tool lending libraries
- Time banks, which create an hour-for-hour currency used to track favors exchanged in a community

4. Level 4: Building Larger-Scale Infrastructure

At the fourth level, we build platforms for the sharing economy into the infrastructure of our cities, towns, and regions; a process which usually involves cooperation of multiple stakeholders and leadership by our local governments. For example, we might require that all new neighborhoods be physically designed to facilitate interaction among residents by ensuring walkability or creating central gathering spaces. Other examples include:

- Community-wide car sharing programs
- Community-wide bike sharing programs
- City or state owned banks

E. The New American Dream

The four platforms described above are, essentially, the new American Dream. Envisioning the sharing economy in this way makes it much easier to let go of the original American Dream – the desire to own a house, own a car, and accumulate a large amount of wealth. If we live in a world where all four levels are thriving in our community and in communities around the world, then we can feel assured that we, too, will thrive.

III

LEGAL CONUNDRUMS IN THE SHARING ECONOMY

Now comes the interesting part: How do these platforms fit into our current legal framework? The sharing economy and the platforms

on which it will operate can be built by individuals, groups, and local governments. The creation of these platforms—especially at the second, third, and fourth levels described above—will be greatly facilitated by transactional lawyers with expertise in agreements, organizations, regulations, and so on.

Practicing law in this new economy comes with unique challenges that also point to the shortcomings of our legal system. Clients approach their lawyers with incredibly innovative ideas for making their communities better. It is the lawyers' job to help them navigate the laws to improve their chances for success and sustainability.

A Hopeful Conundrum!

Although the legal grey areas encountered by the sharing economy can be bewildering, the very fact that activities in the sharing economy cannot be put into traditional legal boxes tells us something very powerful and hopeful: these activities are radically different from what we have been doing for the past century. What a relief! The unraveling of our economic and ecological systems has sent us a clear message that our society needs to do something radically different. By eluding most traditional legal categories, the sharing economy has shown us that it is, truly, a *new* economy.

But the process can be baffling to an attorney. The relationships, transactions, and organizations of the new economy are sometimes so unique that they cannot be classified within existing legal frameworks.

At the core of the conundrum is the fact that our laws were designed to regulate relationships in a competitive economy, not a collaborative one. Our legal system has not foreseen the trend toward a more sharing economy.

A. Laws That Did Not Foresee Collaborative Relationships

Many of our laws developed over the last century to manage economic relationships that were becoming increasingly polarized or exploitative. These relationships include:

- Employer/employee
- Landlord/tenant
- Developer/homebuyer
- Business/investor
- Producer/consumer

Due to the collaborative nature of relationships in the sharing economy, it is often very difficult for an attorney to determine:

- Whether an employer/employee relationship exists in a worker cooperative;
- Whether a landlord/tenant relationship exists in a housing cooperative;
- Whether a developer/homebuyer relationship exists in a resident-developed cohousing community;
- Whether a business/investor relationship exists in a community-supported agriculture program;
- Whether a producer/consumer relationship exists in a food cooperative.

The fact is that, in the sharing economy, many of these relationships overlap, are highly collaborative, or involve actors with a close and accountable relationship. Because it lacks many of the same power dynamics of the old economy, some have described the new economy as one with primarily horizontal, rather than vertical, relationships. Thus, it can be very difficult to determine whether certain labor, real estate, securities, commercial, and other regulations even apply to activities in the sharing economy. And when such regulations do apply, they can be unduly burdensome given that they are designed to protect the powerless against the powerful and such protections are often unnecessary when relationships are horizontal.

B. Laws That Did Not Take into Account the Varied Motivations Behind Our Activities/Enterprises

There is an assumption embedded in our legal system that we do things with three different and separate motivations: personal, commercial, and charitable. Take food-growing as an example:

- 1. Personal:** Home gardeners grow food for personal consumption;

2. **Commercial:** Farmers grow food for commercial sale;
3. **Charitable:** Nonprofits run gardens to feed the poor or educate communities.

Each of these three activities is subject to different zoning regulations, different agricultural regulations, different types of insurance coverage, and different labor and tax laws. Furthermore, if these food growers form an organization for their activity, they will each likely choose a different tax status and different structure for their legal entity. So long as activities fit neatly into the categories of personal, commercial, and charitable, the work of a lawyer is fairly uncomplicated.

Nothing is so perfectly segmented in the sharing economy. Sharing lawyers constantly meet clients engaging in activities that:

1. **Straddle the line between personal and commercial:** A home gardener that sells backyard produce to neighbors;
2. **Straddle the line between commercial and charitable:** A nonprofit educational farm that sells a large amount of produce;
3. **Straddle the line between charitable and personal:** A nonprofit farm that pays its volunteers in food.

From social, environmental, economic, and practical perspectives, each of those three examples makes wonderful sense! After all, people are growing food in ways that nourish themselves and their communities and that contribute to the economic sustainability of the activity.

From a legal perspective, however, there may be some difficult news to break. The home gardener may be told that her activity violates zoning regulations and will not be covered by homeowners insurance. The educational farm may be told that the sale of large amounts of produce will not be considered a tax-exempt activity by the IRS. The other nonprofit farm may be told that paying volunteers in food violates rules against nonprofits distributing assets to private individuals or brings up labor law problems because volunteers are generally supposed to work without expectation of compensation.

C. Laws That Did Not Foresee Diverse Forms of Exchange

Our society is captivated by dollars and so is our legal system. Taxes must be paid in dollars. Minimum wage must be paid in dollars. Most income is difficult to recognize and quantify unless it

comes in the form of dollars. The application of many rules and regulations is determined by dollar volume of a business, and so on.

What is a sharing lawyer to do when complimentary currencies, bartering, time banks, work-trade arrangements, and sweat-equity arrangements become a significant means by which value is exchanged in our economy? The primary challenges for a sharing lawyer are: (1) to determine whether a regulated relationship has arisen from such an exchange (such as an employee/employer relationship or investor/business); and (2) to determine how to account for and advise on tax reporting for a transaction.

For example, a kitchen is set up where customers come in, help out in the kitchen for thirty minutes, and then get a free meal in exchange for their time. How do you characterize such an exchange? Can you say that the volunteers are simply a group of people collaboratively cooking a meal for themselves and no exchange has taken place? Or are these volunteers in reality doing work that should afford them the protection of labor laws and therefore requires that they be paid in

To Do: Change Our Laws

Sharing lawyers and community activists have a great deal of work ahead to bring our laws into sync with the realities of the sharing economy. Certain employment laws, securities regulations, commercial regulations, and zoning ordinances create incredibly difficult legal barriers, such that we should change them sooner rather than later. In other legal realms the sharing economy will forge ahead, *in spite of* the legal barriers and inconveniences that remain. In the meantime, sharing lawyers are well-positioned to collect stories and examples, and to develop best practices and policy recommendations to adapt our laws to the needs of a changing economy.

dollars rather than food? If payment in food is allowed, is the value of the meal taxable as income to the volunteers? Given the incredible variation in the pricing of foods, how would you even determine the fair market value of the meal? Our legal and tax systems are simply not set up for non-dollar forms of exchange to become a significant portion of our economy.

IV

PRACTICING LAW IN THE SHARING ECONOMY

What does the work of a sharing lawyer look like? The nine primary areas of work of a sharing lawyer are described briefly here.

- **Designing and Drafting Agreements:** Agreements are the roadmaps to relationships in the sharing economy. Every person will likely be party to many different agreements in the sharing economy. The work of a sharing lawyer in drafting agreements will need to be creative, since such agreements will structure highly collaborative, possibly complex, and long-term relationships. And, notwithstanding the fact that lawyers are expected to write like this, we hereby declare that the aforementioned contracts in the sharing economy shall henceforth be much more readable than this sentence!
- **Choosing, Forming, and Structuring Entities:** Entities provide a legal structure in which groups of people work together, manage assets, engage in cooperative activities, and operate social enterprises. The sharing economy offers endless opportunities for sharing lawyers to get creative in choosing and structuring entities. Our usual menu of entity choices—C Corporations, 501(c)(3) nonprofits, limited liability corporations, and so on—does not always meet the unique needs of organizations in the new economy. Sharing lawyers often look beyond the usual options to low-profit limited liability companies, Benefit Corporations, 501(c)(4) or 501(c)(7) nonprofits, cooperative corporations, and other less common entities and tax statuses. After choosing an entity, a sharing lawyer then works with clients to iron out questions related to governance, profit-sharing, protection of social purpose, accountability to stakeholders, tax, and much more.
- **Advising on the Legalities and Taxation of Exchange:** Barter transactions, barter networks, community currencies, time banks, and other non-dollar modes of exchange bring up interesting questions for lawyers, not the least of which is: what is taxable income? Gifts and casual non-taxable exchanges generally do not result in taxable income, but more formal barter transactions usually do. The question then becomes: what's the difference? In the sharing economy, people provide valuables, goods, and services to each other through a variety of relationships, and

grey areas abound. As new currency systems develop, sharing lawyers must also grapple with a handful of questions to determine whether the currency is even legal.

- **Navigating Securities Regulations:** In a world where enterprises and housing will ideally be financed and owned by members of local communities, securities law compliance will keep sharing lawyers busy. By developing proficiency in securities laws, a sharing lawyer can help a grocery cooperative finance its start-up with member loans, help a movie theater sell ownership shares to clientele, or help a cohousing community purchase land with loans from friends and neighbors, all without risking lawsuits, fines, and other penalties for securities law violations. Yet again, unique legal grey areas abound: if thirty people put in \$200 each to launch their small food buying cooperative, is that a security? If members of a community-supported farm pay \$500 to a farmer to receive a share of the year's harvest, is that a security?
- **Navigating Employment Regulations:** As communities adopt diverse and collaborative ways of making livelihoods, the labor and employment laws will need to be applied in some unexplored territory. If members of a grocery cooperative volunteer three hours per month to help receive and distribute bulk orders, must they be treated and paid as employees? Can residents of a housing cooperative put in work hours in exchange for lower rent without violating employment laws? Can an employer pay an employee partially in a local currency and, if so, how does that payment get reported on taxes and get factored into the calculation of the payment of overtime? Is it possible to volunteer or intern on a farm? Sharing lawyers frequently have to advise clients on how to structure their relationships and how to manage work and compensation in order to comply with or avoid the application of employment laws.
- **Navigating Regulations on Production and Commerce:** Health and safety regulations, food and agricultural regulations, childcare center licensing, public utilities regulations, regulations on taxi cabs, regulations on the hotel industry—these are all topics that a lawyer may need to be familiar with when advising commercial clients. But how do these regulations apply to activities that are not clearly commercial, such as food swapping events, community gardens, babysitting cooperatives, energy

cooperatives, paid ridesharing arrangements, or renting out a room to tourists? Are these activities subject to all of the same regulations as their commercial counterparts, and are there special exemptions for small scale or collaborative arrangements? Regulations on commercial activities have been largely developed to manage transactions between producers and consumers that have little or no relationship and that are clearly in the impersonal commercial realm. The sharing economy is built on a very different set of relationships, which makes it tricky to determine which regulations may or may not apply.

- **Managing Relationships with, and the Use of, Land:** Land is an incredibly important resource, and the resilience of our economy and ecosystems demand that we find new ways to structure ownership of land, manage uses of land, finance the acquisition and development of land, etc. For a sharing lawyer, this means developing creative new agreements and entities, as well as navigating real estate, subdivision, and land use regulations that do not necessarily fit well with the ways we will structure relationships with land in the sharing economy.
- **Managing Intellectual Property:** Sharing of intellectual property arguably brought us some of the earliest innovations in sharing and the law with the creation of open source software licenses and Creative Commons licenses. IP lawyers and creative people continue to break new ground, such as with the recent development of “humanitarian licenses” and other tools to make patented inventions available to use for the public good. With every new book, photograph, musical track, software program, and invention, the creators may ask themselves the question: do I want to share this and, if so, how, where, when, with whom, and for what purposes do I want to share it? By developing expertise in creative licensing, IP lawyers can help their clients navigate the array of options for shareability.
- **Managing Risk:** Since fear of liability and loss can be a barrier to sharing and collaboration, sharing lawyers spend a lot of time drafting agreements that clarify responsibilities, allocate risk, waive liability for certain activities, indemnify members of a group from others’ liabilities, and create other ways to ensure that communities can remedy a loss, resolve disputes outside of litigation, and reduce risks of loss. The topic of insurance creates interesting challenges for attorneys since, for example,

traditional car insurance policies may not cover car sharing, and traditional homeowners' policies may not cover backyard community gardening activities.

In sum, the work of a sharing lawyer will often be challenging, but will always remain interesting and demand creativity. Perhaps best of all, the work of a sharing lawyer will contribute importantly to the creation of a world in which innumerable people have now decided they want to live.