



GREENWAY CHAMBERS

Stephen Ipp – 2025.03.16

**CURRENT LEGAL ISSUES FOR CRYPTOCURRENCY
SEMINAR PAPER**

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A. INTRODUCTION TO CRYPTOCURRENCY

1. Cryptocurrency is a relatively new type of virtual currency or digital asset that is not generally accepted as legal tender¹ and generally requires its users to be somewhat tech savvy. These factors make it little understood. There are many different types of crypto assets. This paper is concerned largely with cryptocurrencies, the best known example of which is Bitcoin which was the first crypto asset developed in 2008.²
2. Until recently, Courts and lawyers in common law jurisdictions have been largely uncertain as to how cryptocurrency should be classified by the law. This uncertainty in turn has meant owners of cryptocurrency who are victims of wrongdoing have been uncertain as to the remedies available to them to sue wrongdoers for damages and to recover their lost crypto assets. Recent developments in the jurisprudence of common law jurisdictions have resolved some of the initial uncertainty regarding the classification of cryptocurrency at law.
3. The purpose of this paper is to first, shed some light on these jurisprudential developments, secondly, to identify typical issues claimants face when seeking to recover their cryptocurrency losses and thirdly, to provide an overview of moves by the Australian Securities and Investments Commission to increase its regulation and enforcement of cryptocurrency markets.

B. RECENT CORPORATE CRYPTO COLLAPSES

4. Recent major collapses of cryptocurrency businesses have been a catalyst for the development generally of jurisprudence regarding cryptocurrency and other digital assets. In 2022 the price of cryptocurrency declined significantly, and markets experienced high losses such that the period became known as the “Crypto Winter of 2022”. The period saw major crypto collapses including the collapse in value of Terra (LUNA) (a cryptocurrency) and Terra USD (UST) (an algorithmic stablecoin) where investors lost over \$40 billion and one of the largest crypto exchanges, FTX, collapsed with estimated losses of \$8 billion.

¹ Only two countries, El Salvador and the Central African Republic, have officially adopted Bitcoin as a legal tender.

² In October 2008 a famous paper, generally referred to as the “Bitcoin White Paper”, was published. Its actual title was *Bitcoin: A Peer-to-Peer Electronic Cash System*. The named author is “Satoshi Nakamoto”, which was a pseudonym: *Tulip Trading Limited v Bitcoin Association for BSV* [2023] EWCA Civ 83 at [17].



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5. In recent years Australia too has experienced major collapses of crypto businesses with claims of creditors in the many millions of dollars. Examples include:

- **2024 - DCA Capital**
 - \$100m owed to creditors
- **2024 - NGS Crypto**
 - \$62m owed to creditors
- **2023 - Blockchain Global Ltd**
 - \$50m owed to creditors
- **2022 - Digital Surge Pty Ltd**
 - \$33m owed to creditors due to FTX's collapse
- **2022 - ACCE Australia Pty Ltd t/as Mine Digital**
 - \$16m owed to creditors

C. THE TYPICAL CLAIMANT SCENARIO

6. A claimant either holds cryptocurrency or believes that he or she is the owner of cryptocurrency held by a third party and the claimant is a victim of fraud and/or has or is likely to suffer losses because of the financial collapse of a cryptocurrency exchange. You are asked to advise the claimant.

The issues

7. Two issues typically arise for immediate consideration:
- a. who is holding the cryptocurrency?
 - b. how is the cryptocurrency being held?
8. The answers to these questions are important because they assist in informing the answers to other very important questions:
- a. who is the legal and beneficial owner of the cryptocurrency asset?
 - b. what remedies are available to a claimant to protect and/or recover its cryptocurrency?



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- c. who can the claimant sue to protect and/or recover its cryptocurrency?
- d. what legal jurisdiction should the claimant commence recovery action in?
- e. what regulatory regime applies to the cryptocurrency?
- f. what steps can be taken to enforce a court order regarding cryptocurrency when the claimant does not have access to the cryptocurrency?

D. WHAT ARE CRYPTOCURRENCY ASSETS?

9. Cryptocurrencies are a subset of digital assets specifically designed as a form of decentralized, digital money. Digital assets include any assets that exist in a digital form and can be owned, transferred, or traded electronically. As such, a “digital asset” is a broader concept than that of cryptocurrency.
10. There is no uniformly accepted definition of a crypto asset.³ However, cryptocurrency is a virtual currency or digital asset (it exists in a digital form) that was designed to work as a medium of exchange in place of money and which can be transferred, stored and traded digitally. A crypto asset has been described as:⁴

“...a cryptographically secured digital representation of value or contractual rights that uses some type of DLT [design ledger technology] and can be transferred, stored or traded electronically. Examples of cryptoassets include Bitcoin and Litecoin (and other ‘cryptocurrencies’), and those issued through the Initial Coin Offering (ICO) process, often referred to as ‘tokens’.”
11. There are many different types of crypto assets. **Annexure A** to this paper contains a description of some other crypto assets.
12. Those who are not familiar with some of the detail regarding the nature and operation of cryptocurrency transactions may find useful a succinct and informative description of cryptocurrency in Justice Jackman’s paper “Is Cryptocurrency Property?”⁵

³ Cryptoassets Taskforce: final report October 2018. See also *The Cryptoassets Taskforce (consisting of HM Treasury, the Financial Conduct Authority and the Bank of England) joint report, The UK Jurisdiction Taskforce’s legal statement (UKJT statement)*.

⁴ Proposal for a Regulation of the European Parliament and of the council on markets in crypto-assets, and amending Directive (EU) 2019/1937, article 3(2).

⁵ “Is Cryptocurrency Property?”, Jackman J, Commercial Law Association, 21 June 2024; (<https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-jackman/jackman-j-20240621>).



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Annexure A to this paper includes the relevant extract of Jackman J’s seminar paper together with other several other useful extracts of judicial commentary on core cryptocurrency concepts. The reader should have regard to Jackman J’s seminar paper in its entirety.

13. In addition, in *ASIC v Web3 Ventures Pty Ltd* [2024] FCA 64 at [7] – [9] and [12], Jackman J records some further observations regarding the nature of cryptocurrency assets. Other examples of judicial pronouncements regarding the nature of cryptocurrency include Mellor J’s judgment in *Crypto Open Patent Alliance v Wright* [2024] EWHC 1198 (Ch) at [307] to [335] which contains a treasure trove of detail regarding the origin and nature of Bitcoin; Gendall J’s observations in *Ruscoe v Cryptopia Ltd (in liq)* [2020] NZHC 728 [2020] 2 NZLR 809 at [21] and [22] (**Ruscoe**); Attiwell J’s in *Re Blockchain Tech Pty Ltd* [2024] VSC 690 at [384] – [388] and Chan J’s in *Re Gatecoin Limited (in liq)* [2023] 3 HKC 401 at [12]–[20].

D. WHO IS HOLDING THE CRYPTO ASSET AND HOW IS IT BEING HELD?

14. The answer to the question “who is holding the crypto asset?” largely depends on how the crypto asset was bought and is stored. Cryptocurrency is usually bought on a trading platform. Cryptocurrency is usually kept in a unique digital “wallet”. There are two types of wallets. *First*, a software wallet connected to the internet (known as a “hot wallet”). A software wallet is held by an individual or by a crypto trading platform i.e. a custodian, on an investor’s behalf. *Secondly*, a hardware wallet (known as a “cold wallet”). A hardware wallet stores these private keys on a secure device not connected to the internet. Each wallet has private keys (unique codes) that authorise transactions on the blockchain network.⁶
15. Cryptocurrency may also be held by an investment fund which invests in crypto assets.
16. Questions of ownership often arise where the crypto asset is held by a custodian (third party) on behalf of an investor. In *Ruscoe* Gendall J held that ownership of crypto assets is decided by proof of control of the crypto asset and that this is typically evidenced by the private key which his Honour described as akin to a PIN number.⁷
17. Wallbank J of the BVI Commercial Court in *Philip Smith and Jason Kardachi (in their capacity as joint liquidators) v In Tue Group Holdings Limited* BVIHC (COM) 0031 OF

⁶ <https://moneysmart.gov.au/investment-warnings/crypto-assets>.

⁷ *Ruscoe v Cryptopia Ltd (in liq)* [2020] NZHC 728 [2020] 2 NZLR 809 at [112].



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2021 (*Torque*), adopted similar reasoning to Gendall J in *Ruscoe* in holding that the test of ownership of crypto assets was proof of "exclusive control" to deal with those assets. Torque operated a Singaporean run cryptocurrency trading platform offering various crypto-related services. The majority of Torque's crypto assets were held in a wallet provided by Binance, an exchange located in Cayman and Torque held the private keys. This was sufficient for Torque to prove it had "exclusive control" to deal with those assets.

18. In Australia, Attiwell J referred to Gendall J's reasoning in *Ruscoe* with implicit approval in *Re Blockchain Tech Pty Ltd* [2024] VSC 690 at [375]. Accordingly, the position in Australia is consistent with other common law jurisdictions to the effect that the holder of the private key is likely to be considered the owner of the crypto asset.

E. IS CRYPTOCURRENCY PROPERTY AND WHY DOES IT MATTER?

19. The question of whether cryptocurrency is property matters because this classification enables an owner to identify what type of property rights he or she has as an owner. For example, does the owner have proprietary rights or personal rights over the cryptocurrency? The classification of cryptocurrency as "property" is the first step in establishing, for example, that the cryptocurrency is the subject matter of a trust or a proprietary right of security or an asset in a deceased person's estate.⁸
20. The classification of cryptocurrency into a particular asset class is especially relevant when determining competing claims to cryptocurrency assets by different classes of creditors in a liquidation. For example, unsecured creditors who can prove ownership of cryptocurrency and establish that it is within the legal meaning of "property" will be able to share in any distribution to creditors. However, a finding that cryptocurrency is property may also give rise to competing claims by persons asserting that the cryptocurrency is trust property.

⁸ Sarah Green, 'Cryptocurrencies in the Common Law of Property'.



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Foreign courts decide that cryptocurrency is “property”

England

Robertson v Persons Unknown (unreported 16 July 2019) (Commercial Court) (**Robertson**)

21. In *Robertson*, Moulder J of the English High Court considered an application for a freezing order and proceeded on the basis that cryptocurrency could be personal property.

AA v Persons Unknown [2020] 4 WLR 35 (**AA**)

22. In *AA* an insurer sought, among other things, a proprietary injunction in respect of Bitcoin held by an exchange. Bryan J carried out a detailed analysis to find that Bitcoin meets criteria set out by Lord Wilberforce in *National Provincial Bank Ltd v Ainsworth* [1965] 1 AC 1175, 1248 (**Ainsworth**) as being definable, identifiable by third parties, capable in their nature of assumption by third parties, and having some degree of permanence. Bryan J cited with approval the UK Jurisdiction Taskforce publication, “Legal statement on crypto assets and smart contracts” which concluded that crypto assets are to be treated in principle as any other property. This led Bryan J to also conclude that cryptocurrency could be personal property and thus could be the subject of a proprietary injunction.

Tulip Trading Limited v Bitcoin Association for BSV [2023] EWCA Civ 83 (**Tulip**)

23. In *Tulip* at [24], the English Court of Appeal approved Bryan J’s reasoning in *AA v Persons Unknown*.

New Zealand

Ruscoe v Cryptopia Ltd (in liq) [2020] NZHC 728 [2020] 2 NZLR 809 (**Ruscoe**)

24. In *Ruscoe*, liquidators applied for directions as to whether the cryptocurrency was an asset of the company under the Companies Act 1993 (NZ), and as to whether it was held on trust for the account holders. In a judgment containing very comprehensive reasoning that is now often cited internationally, Gendall J held in *Ruscoe* that cryptocurrency is property for the purposes of s2 of the Companies Act, applying the



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four indicia of property in *Ainsworth*. Gendall J went on to hold that cryptocurrency was a species of intangible personal property capable of being held on trust.

Singapore

B2C2 Ltd v Quoine Pte Ltd [2019] 4 SLR 17 (B2C2)

25. In *B2C2 Ltd* at [142] Simon Thorley IJ of the Singapore International Commercial Court considered that cryptocurrencies “do have the fundamental characteristic of intangible property as being an identifiable thing of value”, and they meet all the requirements for property in *Ainsworth*.
26. On appeal, the Singaporean Court of Appeal said that there may be much to commend the view that cryptocurrencies should be capable of assimilation into the general concepts of property but held that it was not necessary for the Court to decide that issue: *Quoine Pte Ltd v B2C2 Ltd [2020] 2 SLR 20* at [144].

ByBit Fintech Limited v Ho Kai Xin [2023] SGHC 199 (ByBit)

27. In *ByBit*, the Singapore High Court considered whether the cryptocurrency stablecoin known as “Tether” (**USDT**) constitutes property that is capable of being held on trust. Jeyaretnam J held that crypto assets are property and in doing so made the following interesting observations:

31 Crypto assets are not classed as physical assets because we cannot possess them in the way we can possess objects like cars or jewellery. They do not have a fixed physical identity. Yet, crypto assets do manifest themselves in the physical world, albeit in a way that humans are unable to perceive. The combination of Private Key with Public Key unlocks the previous cryptographic lock and in turn locks the unspent transaction output of the crypto asset to the holder’s public Address on the blockchain. Professor Kelvin Low suggests that the right that the holder of the Private Key has by virtue of holding the Private Key is “properly conceptualised as a narrow right to have the unspent transaction output (UTXO) of a cryptoasset locked to a holder’s public address on a blockchain”: see Kelvin FK Low, “Trusts of Cryptoassets” (2021) 34(4) *Trust Law International* 191. This physical manifestation at the level of digital bits and bytes is not permanent, and changes with every transaction. Nonetheless, we identify what is going on as a particular digital token, somewhat like how we give a name to a river even though the water contained within its banks is constantly changing.

32 While some people are sceptical of the value of crypto assets, it is worth keeping in mind that value is not inherent in an object. While we speak of



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expensive materials, with gold being more valuable than wood, this is a judgment made by an aggregate of human minds. It is also a judgment that varies with circumstances. A wooden chair that can float is more valuable on a ship that is sinking than a golden throne would be.

- 33 This description of crypto assets shows that they can be defined and identified by modern humans, such that they can be traded and valued as holdings. They certainly meet Lord Wilberforce’s oft-quoted *dictum* in *National Provincial Bank v Ainsworth* [1965] 1 AC 1175 at 1248:

British Virgin Islands

Joint Liquidators of Torque Group Holdings Limited (In Liquidation) v Torque Group Holdings Limited (In Liquidation) BVIHC (COM) 0031 of 2021 (2 July 2021) (Torque)

28. In *Torque*, the British Virgin Islands Commercial Court considered an urgent application by the liquidators for the court’s sanction to deal with crypto assets. Wallbank J considered whether cryptocurrencies are an “asset” for the purposes of the liquidation within the meaning of s.2(1) of the BVI Insolvency Act, 200342. Wallbank J followed Bryan J’s approach in *AA* and held that crypto assets are assets for the purposes of liquidation and therefore “property” for the purposes of the liquidation of Torque.⁹

Hong Kong

Re Gatecoin Limited (in liq) [2023] 3 HKC 401 (Re Gatecoin)

29. In *Re Gatecoin* at [56]–[59] Chan J determined a dispute between account holders of a crypto exchange platform based in Hong Kong known as Gatecoin, and creditors of Gatecoin. After Gatecoin was wound up the liquidators’ sought directions from the court as to the distributions they were to make to creditors. The account holders contended that cryptocurrency was held on trust by Gatecoin and Gatecoin’s creditors disputed this.
30. After extensively reviewing the authorities in many jurisdictions on the question of whether cryptocurrency was property, Chan J followed Gendall J’s reasoning in *Ruscoe* to hold that cryptocurrency is a form of intangible personal property for the purposes of s.2 of the Companies Act 1993 of Hong Kong. Justice Chan ultimately

⁹ *Joint Liquidators of Torque Group Holdings Limited (In Liquidation) v Torque Group Holdings Limited (In Liquidation) BVIHC (COM) 0031 of 2021 (2 July 2021)* at [25], [26].

rejected the claims of the account holders and held that assets in the hands of the liquidators were to be distributed to Gatecoin's creditors.

Australian courts follow *Ruscoe* and decide that cryptocurrency is “property”

31. In Australia, there is a developing jurisprudence and sophisticated legal commentary which is consistent with the jurisprudence of the foreign courts referred to above in support of the proposition that cryptocurrency is “property”. The first decision of an Australian court to find that cryptocurrency is property is that of *Blockchain Tech Pty Ltd* [2024] VSC 690 (***Blockchain***). In *Blockchain*, Attiwill J of the Victorian Supreme Court held that Bitcoin (and more broadly cryptocurrency) was property.

“Is Cryptocurrency Property?”, Jackman J, Commercial Law Association, 21 June 2024

32. On 21 June 2024, Justice Jackman of the Federal Court of Australia delivered a seminar paper to the Commercial Law Association of Australia titled “Is Cryptocurrency Property?”.¹⁰ In the seminar paper Justice Jackman addressed in detail various arguments as to why cryptocurrency is property and concluded that he agreed that it is. Further, Jackman J stated that cryptocurrency was, in effect, assumed to be property in the two cases which might have analysed the issue: *Commissioner of the Australian Federal Police v Bigatton* [2020] NSWSC 245 (Cavanagh J) and *Chen v Blockchain Global Limited* (2022) 66 VR 30 (Attiwill J).

Australian Securities and Investments Commission v NGS Crypto Pty Ltd (No3) [2024] FCA 822 (***NGS***)

33. On 25 July 2024, Collier J held in *NGS* that for the purposes of an interlocutory application, the meaning of ‘property’ in s9 of the *Corporations Act* is sufficiently broad to encompass cryptocurrency assets. Justice Collier held that:

“at an interlocutory level, the definitions of financial service, financial product, financial investment and property in the *Corporations Act* are sufficiently broad to encompass cryptocurrency assets in appropriate circumstances, and the orders made by her Honour.”

¹⁰ “Is Cryptocurrency Property?”, Jackman J, Commercial Law Association, 21 June 2024; (<https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-jackman/jackman-j-20240621>).

Re Blockchain Tech Pty Ltd [2024] VSC 690 (Re Blockchain)

34. On 12 November 2024, Attiwill J delivered judgment in *Re Blockchain*, which concerned a dispute between relevantly, the plaintiffs, being a software developer company (Blockchain) and its sole director (Mr Chen) and the first defendant (Ms Zhao), arising from their failed dealings involving Blockchain technology and cryptocurrency.
35. The plaintiffs claimed that 36 Bitcoin, valued at more than AU\$5 million, had been transferred to the first defendant under a bailment agreement. The plaintiffs sought immediate possession of these assets and alleged that an additional 25 Bitcoin had been transferred from Blockchain to an exchange for working capital but were misappropriated by the first defendant. Blockchain argued this was held on trust by the first defendant as trustee. Blockchain argued that the defendant trustee had failed to fully account for the sums dissipated which had been partly misappropriated for personal expenses.
36. Attiwill J held that a person's interest in Bitcoin (being intangible) is property under Australian law as it satisfies the four classic criteria for property under the common law set out in *Ainsworth*, that property:
 - a. is identifiable by subject matter;
 - b. is identifiable by third parties;
 - c. is capable in its nature of assumption by third parties; and
 - d. has some degree of permanence or stability.
37. Attiwill J gave five reasons in support of his finding that a person's interest in Bitcoin was property. *First*, it is necessary to identify 'the thing'. The thing is Bitcoin. It is an electronic coin.¹¹
38. *Second*, an interest in Bitcoin is also identifiable by third parties...the public key identifies an address of Bitcoin at that address on the shared public ledger. A person has the power to control and deal with the Bitcoin and to exclude third parties from accessing or dealing with it. This is because a private cryptographic key is also generated. Both the public and private keys are required to deal with the Bitcoin.¹²
39. *Third*, a person's interest in Bitcoin has a degree of permanence or stability. Bitcoin are recorded on the shared public ledger...this contains the 'entire life history of a

¹¹ [384] *Blockchain Tech Pty Ltd [2024] VSC 690*.

¹² [385] *Blockchain Tech Pty Ltd [2024] VSC 690*.

cryptocoin'...Bitcoin are held at a certain digital address. Bitcoin remain stable at the address until there is a transaction concerning those Bitcoin.¹³

40. *Fourth*, although a Bitcoin transfer transaction does not involve the 'transfer' of a person's interest in the Bitcoin, this does not mean that an interest in Bitcoin is not property. This is because alienability is not an indispensable attribute of property. Bitcoin are also the subject of very active trading markets, including cryptocurrency exchanges, throughout the world, including in Australia.¹⁴
41. *Fifth*, a person's interest in Bitcoin may be readily distinguished from a mere interest in information, including electronic data. This is because an interest in Bitcoin includes the power:
 - a. to undertake transactions on a network by the use of a public key and a private key; and
 - b. to exclude third parties from accessing or dealing with the Bitcoin.¹⁵
42. In addition to deciding that cryptocurrency was property, his Honour considered what type of property it was. Attiwell J held that cryptocurrency is not a chose in possession as it is intangible and it cannot be possessed. It is a chose in action that comprises a heterogeneous group of rights which have only one common characteristic in that they do not confer the present possession of a tangible object.¹⁶
43. The decision of Attiwell J in *Re Blockchain* is significant as it is the first decision of a superior court in Australia that has determined on a final basis that a person's interest in cryptocurrency, such as Bitcoin, is property.
44. Accordingly, there is now an overwhelming body of jurisprudence in the common law world, including Australia, to the effect that cryptocurrency is "property". However, whether other forms of digital assets having different technical features to cryptocurrency such as Bitcoin are also considered to be property remains to be seen.

¹³ [386] *Blockchain Tech Pty Ltd* [2024] VSC 690.

¹⁴ [387] *Blockchain Tech Pty Ltd* [2024] VSC 690.

¹⁵ [388] *Blockchain Tech Pty Ltd* [2024] VSC 690.

¹⁶ *Blockchain Tech Pty Ltd* [2024] VSC 690 at [389].

F. WHO IS THE LEGAL AND BENEFICIAL OWNER OF THE DIGITAL ASSET?

45. Once it is understood who holds the cryptocurrency asset, how it is being held and that its legal classification is as a form of property, one may consider who is the legal owner and who is the beneficial owner of the cryptocurrency asset.

Legal ownership

46. As there are many different types of cryptocurrency assets the basis of identifying the legal owner of the cryptocurrency asset may differ depending on the specific characteristics of the cryptocurrency asset. Taking Bitcoin as an example, the legal owner of Bitcoin is typically the person or entity that has possession or control of the Bitcoin. In the case of Bitcoin, possession or control of the Bitcoin is typically the person or entity that controls the private key associated with the Bitcoin. This is because the person or entity who has access to this private key can send and receive Bitcoin.
47. The legal owner of Bitcoin is likely to be the person or entity that controls the private key associated with a Bitcoin wallet. This may be a custodial exchange, (an online platform that allow users to buy and sell cryptocurrencies).¹⁷
48. If cryptocurrency is held by a third party such as a custodial exchange, a claimant will require proof of ownership of the cryptocurrency asset, including evidence as to how the account with the custodial exchange was set up, account statements from the platform, registration or application forms for the account, terms and conditions of the platform, payment records and relevant bank transactions.

Beneficial ownership

49. If a digital asset such as Bitcoin is held by a third party cryptocurrency exchange or wallet provider, the beneficial owner will be the person or entity entitled to the value or profits of the Bitcoin even though the third party holds the private key.
50. A digital asset may be held pursuant to a trust whereby a trustee holds the digital asset for the beneficial owner. In *Re Blockchain*, Attiwell J held that 25 Bitcoin were provided on trust to be sold and the proceeds provided to Blockchain to be used for working

¹⁷ Custodial exchanges are to be compared to “non-custodial exchanges” (referred to as DEXs, Decentralized Exchanges) which are online platforms that allow users to buy and sell cryptocurrencies without holding their assets or private keys.

capital.¹⁸ They were sold and not all of the proceeds were provided to Blockchain. As a result, Attiwill J ordered that Blockchain receive equitable compensation for breach of trust.¹⁹

51. A finding by a court that a digital asset is trust property is particularly important in a liquidation scenario as the digital asset does not form part of the company's general pool of assets available for distribution to unsecured creditors and instead must be returned in specie to the trust creditors.

G. WHERE SHOULD A CLAIMANT COMMENCE LEGAL PROCEEDINGS TO RECOVER MISAPPROPRIATED DIGITAL ASSETS?

Jurisdictional issues

52. If you are acting for a claimant or a liquidator a prominent question will be to identify which jurisdiction should your client commence proceedings for enforcement or recovery action? This is usually determined by the jurisdiction where the digital assets are located. This follows as the common law position is that the "lex situs" or the governing law of the property, is the place in which the property the subject of the dispute is situated.
53. However, the question of which court has jurisdiction to hear a claim can become complicated by several factors. Examples of circumstances that may complicate determining the location of the digital asset include *firstly*, where the digital asset is held by a crypto exchange, and the exchange is domiciled in a different jurisdiction to that of the victim, the fraudster or the digital asset itself. *Secondly*, digital assets can be transferred to different locations in seconds and if transferred by a fraudster often the fraudster's true identity and location is unknown.
54. In *Ion Science Ltd and Duncan Johns v Persons Unknown, Binance Holdings Limited and Payward Limited (Ion Science)*, unreported decision of the High Court of England and Wales, December 2020, Butcher J held on an ex parte interim application that the location of the crypto asset determines:
- a. the jurisdiction of the court; and
 - b. the applicable law of the dispute.

¹⁸ *Re Blockchain Tech Pty Ltd* [2024] VSC 690 at [445].

¹⁹ *Re Blockchain Tech Pty Ltd* [2024] VSC 690 at [480].

55. However, how does one determine the location of the crypto asset? In *Ion Science* the English High Court held that the domicile or the residence of the person or company owning the coin or token determines the location of the crypto asset.
56. *Ion Science* incurred crypto losses when it invested in a Ponzi scheme. It did not know the location of the company it believed it had invested its crypto assets with. The High Court held that England was the appropriate jurisdiction to commence proceedings in because the governing law of the cryptocurrency asset was the place in which the person or company who owned the asset was domiciled and *Ion Science* was domiciled in England.²⁰
57. *Ion Science* was followed by HHJ Pelling QC sitting as a Judge of the High Court in *Fetch.ai Ltd and another v Persons Unknown Category A5* [2021] EWHC 2254 (Comm) and by Trower J in *D'Aloia v Persons Unknown* [2022] EWHC 1723.
58. However, in *Tulip Trading Limited v Bitcoin Association for BSV* [2022] EWHC 667, Falk J cast doubt on the approach in *Ion Science* and preferred a test of residency to domicile. This can be significant as a person's domicile may be different to his or her residence.
59. Therefore, at the very least, the position in England is that the location of the cryptocurrency asset is likely to be the domicile or residence of the owner of the cryptocurrency asset. As stated above, this location determines the jurisdiction of the court and the applicable law of the dispute.
60. A related consideration for claimants and liquidators is whether the jurisdiction is appropriate for recovery or enforcement action (i.e "creditor friendly"). This in turn will be influenced by factors such as:
 - a. the expertise of the local courts;
 - b. applicable cross border insolvency laws;
 - c. ease of recognition and enforcement of foreign judgments/freezing orders;
 - d. role of the regulator and the extent of regulatory oversight.

²⁰ *Ion Science Ltd and Duncan Johns v Persons Unknown, Binance Holdings Limited and Payward Limited*, unreported decision of the High Court of England and Wales, December 2020, at [13].

H. WHAT REMEDIES ARE AVAILABLE TO A CLAIMANT TO RECOVER ITS DIGITAL ASSET?

61. A claimant seeking to recover cryptocurrency assets must move quickly due to factors such as the ease and speed with which cryptocurrency assets can be transferred and the decentralised and typically anonymous nature by which cryptocurrency assets are held. Existing legal remedies fashioned to aid in such circumstances including injunctions, freezing (asset preservation) orders, ancillary disclosure and search orders. As the Master of the Rolls, Sir Geoffrey Vos observed:²¹

"In the world of crypto fraud, there are no national barriers and unlawfully obtained cryptoassets can be difficult to trace."

Proprietary injunctions

62. A claimant may seek a proprietary injunction when he or she can identify specific digital assets in the hands of another which the claimant contends belong to him or her. for example, in *Janesh s/o Rajkumar v Unknown Person ("CHEFPIERRE")* [2022] SGHC 264, the Singapore High Court granted a proprietary injunction prohibiting an unknown person defendant who went by the pseudonym "chefpierre.eth", from "in any way dealing with the Bored Ape non-fungible token (NFT) until after trial. OpenSea, the operator of the digital marketplace cooperated and froze the sale of the NFT's on its marketplace.
63. However, claimants seeking a proprietary injunction against a third party such as a crypto exchange i.e. an entity other than the fraudster, must be careful to satisfy their duty of full and frank disclosure to the court when making the application on an ex parte basis. The risks of not doing so are illustrated by the decision of the English High Court in *Piroozzadeh v Persons Unknown and Others* [2023] EWHC 1024 (Ch) where Trower J discharged an interim proprietary injunction against the cryptocurrency exchange Binance which required it to preserve certain cryptocurrency that the claimant, the alleged victim of a cryptocurrency fraud, claimed to be able to trace to the exchange.
64. Trower J held that the claimant had failed to discharge its duty of disclosure to the court by failing to inform the court of a possible bona fide defences open to Binance

²¹ "Contracts, just smarter. Seizing the opportunity of smarter contracts", Lawtech. UK Launch of Smarter Contracts report, 24 February 2022 at paragraph 19.

and by failing to show how Binance could comply with the injunction when the relevant digital assets were comingled and dissipated.

Injunctions known as asset preservation or “freezing” orders

65. Claimants typically seek a species of injunction now often referred to as freezing orders combined with ancillary disclosure orders. A freezing order is a powerful tool for a claimant. Freezing orders (previously referred to as “Mareva injunctions”) were famously described by Lord Donaldson MR as the “nuclear weapons of the law” in *Polly Peck international Plc v Nadir (No 2)* [1992] 4 ALL ER 769.
66. Freezing orders are made upon proof that a prospective defendant may otherwise dissipate assets with the effect of defeating a prospective judgment.²² A freezing order is an in personam remedy rather than a proprietary remedy as the court make orders against a person preventing him or her from removing or dissipating their assets.
67. The ability to obtain relief in the form of a freezing order is particularly relevant to claims involving digital assets as a freezing order may be made against a person:
 - a. located out of the jurisdiction, if the relevant assets are in Australia;²³
 - b. in aid of foreign proceedings where the respondent has assets in Australia;²⁴
and
 - c. who has assets outside Australia (discussed below).
68. The High Court held in *Deputy Commissioner of Taxation v Huang* (2021) 395 ALR 616 [2021] HCA 43 that the Federal Court has the power to make worldwide freezing orders in Australia, pursuant to r 7.32(1) of the Federal Court Rules 2011, whenever there is a danger that a prospective judgment will be wholly or partly unsatisfied. This means that worldwide freezing orders can be made by the Federal Court of Australia against a person who has assets located in any jurisdiction. This aligns the law of Australia with that of the longstanding position in England.²⁵

²² r 25.11 *Uniform Civil Procedure Rules* 2005 (NSW) **UCPR**; r 7.32 *Federal Court Rules* (**FCR**)

²³ r25.16. UCPR.

²⁴ r25.14 UCPR; *Davis v Turning Properties Pty Ltd* (2005) 222 ALR 676.

²⁵ *Babanaft International Co SA v Bassante* [1990] 1 All ER 433 and *Republic of Haiti v Duvalier* [1990] 1 QB 202).

Ancillary disclosure and search orders in Australia

69. Ancillary disclosure orders are intended to require a defendant or third party to disclose information and produce documents regarding, for example, the type or description of the cryptocurrency asset held and its location.²⁶ Ancillary orders can be made against a non-party.²⁷
70. In *Chen v Blockchain Global Ltd* (2022) 66 VR 30; [2022] VSC 92, the parties were in dispute as to ownership of Bitcoin. The Bitcoin were held in a Bitcoin wallet in relation to which the directors each held a security password. Both passwords were required to deal with the Bitcoins, and if one were lost, forgotten or corrupted, the Bitcoins would be inaccessible. In other words, the subject matter of the litigation would be lost. Attiwell J made disclosure orders requiring the passwords to be disclosed and recorded in sealed envelope held with the Court and verified by a member of Court or party's solicitor.
71. Search orders (also known as Anton Pillar orders) may be made where there is risk of loss or damage to evidentiary material.²⁸

“Bankers Trust” and “Norwich Pharmacal” orders against third parties

72. Courts in England and Wales have led the way in making sophisticated disclosure orders against third parties known as “Norwich Pharmacal” orders and “Bankers Trust” orders. These are in effect orders for preliminary discovery which can be obtained on an ex parte basis at or before the commencement of proceedings. They are invaluable tools in the fraud lawyer's arsenal.

“Norwich Pharmacal” orders

73. Norwich Pharmacal²⁹ orders are a form of asset tracing order that require an innocent third party to provide information such as the nature and whereabouts of assets and the names and addresses of those in possession of assets, to enable the victim to trace misappropriated funds. Norwich Pharmacal orders are used by victims to identify wrongdoers or obtain evidence of wrongdoing. The court is satisfied that the plaintiff

²⁶ UCPR r 25.12; FCR r 7.33

²⁷ UCPR r 25.13; FCR r 7.34; NSW: Practice Note SC Gen 14; FCA: GPN-FRZG

²⁸ UCPR rr 25.18-25.24; FCR rr 7.42-7.47

²⁹ Derived from the House of Lords decision in *Norwich Pharmacal Co. & Others v Commissioners of Customs and Excise* [1974] AC 133.

will probably suffer irreparable damage if there is any delay in ordering discovery – i.e., show need for urgency. Norwich Pharmacal orders can also be made against a party to proceedings.³⁰

Bankers Trust” order

74. A Bankers Trust order³¹ is a variation of the Norwich Pharmacal order, it applies in more limited circumstances and is made only in urgent cases upon prima facie proof of fraud or wrongdoing. It is used to obtain disclosure in aid of a victim’s proprietary claim e.g. a tracing claim. For example, a Bankers Trust order may require banks to give discovery regarding the bank accounts of third parties that have received the claimant’s money. In the case of cryptocurrency, claimants will look to obtain such orders against a crypto exchange. This occurred in *Ion Science*³², where the English High Court made a Bankers Trust order against a crypto exchange located out of the jurisdiction.

“Norwich Pharmacal” and “Bankers Trust” orders in Australia

75. Australian courts have approved and applied the principle that discovery orders may be made against third parties akin to Norwich Pharmacal and Bankers Trust orders: *Breen v Williams* (1996) 186 CLR 71 at 120; (1996) 43 ALR 481; [1996] HCA 57 (Gummow J).³³ However, care should be taken to ensure an applicant for such relief satisfies the requirements of the court rules of the state³⁴ or Federal Court rather than adhering to the conditions developed in jurisdictions such as England for the making of such orders.³⁵

³⁰ *Computer Share Ltd v Perpetual Registrar Limited* (2000) 1 VR 626, (at [15]-[19]); [2000] VSC 139 (Warren J).

³¹ Derived from the English Court of Appeal decision in *Bankers Trust Co v Shapira* [1980] 1 WLR 1274.

³² *Ion Science Ltd and Duncan Johns v Persons Unknown, Binance Holdings Limited and Payward Limited*, unreported decision of the High Court of England and Wales, December 2020.

³³ In relation to Norwich Pharmacal orders see *Golf Lynx v Golf Scene* (1984) 59 ALR 343, 349-350 (Legoe J); *Nexgen Sydney Pty Ltd v Barakat* [2020] NSWSC 1169 (Williams J); *Computer Share Ltd v Perpetual Registrar Limited* (2000) 1 VR 626, (at [15]-[19]); [2000] VSC 139 (Warren J) and *Hooper v Kirella Pty Ltd* (1999) 96 FCR 1 at [28]. Equitable discovery orders were made against a bank in *Petrochemical Commercial Company International Ltd v Commonwealth Bank of Australia* [2019] NSWSC 849.

³⁴ UCPR, r 25.12 for making orders ancillary to a freezing order; Supreme Court Act 1970, s 23 for protecting the administration of justice; and UCPR, r 1.4 for granting discovery prior to the commencement of proceedings; FCR 7.33.

³⁵ See *A Nelson & Co Ltd v Martin & Pleasance Pty Ltd* (2021)150 ACSR 314; (2021) 157 IPR 376 at [74] – [[78] (FlickJ).

Section 1323 of the Corporations Act

76. ASIC or an “aggrieved person” may apply for orders pursuant to s1323 of the Corporations Act. An “aggrieved person” is somebody who is or may be owed money and whom has a claim against the wrongdoer debtor: *Australian Securities and Investments Commission v Sigalla* (2009) 74 ACSR 710 [2009] NSWSC 1205 at [19].
77. The purpose of orders under section 1323 is to protect the interests of aggrieved persons: *ASIC v Burnard* [2006] NSWSC 611 at [14] per Barrett J. It does so by preserving the relevant person’s assets until an investigation, prosecution or proceeding is completed, so that those assets will be available to meet the claims of those persons. The assets the subject of an order pursuant to s1323 are held as security for claims by an aggrieved person: *Australian Securities and Investments Commission (ASIC) v A One Multi Services Pty Ltd* [2021] FCA 1297 at [28] (Derrington J).
78. Orders may be made before the liability is established or evidence necessary to establish that liability has been collected. Furthermore, orders may be made where it is “*necessary or desirable ... for the purpose of protecting the interests of a person*” and the applicant need not establish a prima facie case of liability on the part of the relevant person or that their assets have been or are about to be dissipated; see also *ASIC v A One Multi Services Pty Ltd* [2021] FCA 1297 at [27] (Derrington J).³⁶
79. An order may be made under s 1323(1) if:
- a. an investigation is being carried out under the ASIC Act or the Corporations Act³⁷, in relation to an act or omission by the defendant which constitutes or may constitute a contravention of the Corporations Act (s 1323(1)(a));
 - b. a prosecution has been commenced for a contravention of the Corporations Act (s1323(1)(b)); or

³⁶ [9.1323] *Austin and Black’s Annotations to the Corporations Act*, LexisNexis Australia.

³⁷ This may also include an investigation by a liquidator under under the ASIC Act or the Corporations Act: *Re 30 Denham Pty Ltd (in liq)* [2023] FCA 134; *Fourteen Consulting Services Pty Ltd (in liq) v AOB Holding Pty Ltd* [2023] FCA 704; at [14]; *Hogan (liquidator) v McCorkell* [2023] FCA 863 at [80].

- c. or a civil proceeding has been commenced under the Corporations Act (s1323(1)(c));

and the court considers it necessary or desirable for the purposes of protecting the interests of a person to whom the subject of the order is liable or may become liable, whether in relation to a debt, by way of damages or compensation or otherwise, or to account for financial products or other property.

- 80. If one of the prerequisites to the making of an order under this section is satisfied, the court still has a discretion whether to make that order, and relevant factors include the balance of the public interest and the private rights of the defendant: *Beach Petroleum NL v Johnson* (1992) 9 ACSR 404 at 407; *Australian Securities and Investments Commission v CME Capital Australia Pty Ltd (No 3)* [2016] FCA 545; at [4]–[8].

Appointment of a receiver under s1323 of the Corporations Act

- 81. The court may appoint a receiver and manager over property of a corporation, or a receiver or trustee of a natural person's assets under s1323(1)(h) to preserve those assets: *Australian Securities and Investments Commission v Marco (No 4)* [2020] FCA 881 at [11]. Circumstances which support the appointment of a court appointed receiver include where there is comingling of cryptocurrency assets and complex asset tracing required: *Australian Securities and Investments Commission v NGS Crypto Pty Ltd* [2024] FCA 373 at [44] per Meagher J.

Freezing orders under s1323 of the Corporations Act

- 82. Frequently, an applicant for relief under s1323 of the Corporations Act seeks freezing orders as well as orders for the appointment of a receiver, as the freezing order assists in the preservation and protection of the subject asset to prevent further dissipation: *ASIC v A One Multi Services Pty Ltd* [2021] FCA 1297 at [36] (Derrington J).

Travel restraint orders under s1323 of the Corporations Act

- 83. Upon sufficient proof of matters going to whether there is a "flight risk", travel restraint orders may be made pursuant to s1323(1)(k) of the Corporations Act prohibiting a person from leaving Australia or attempting to leave Australia and pursuant to s1323(1)(j) of the Corporations Act requiring the delivery up of the person's passports: *Australian Securities and Investments Commission v NGS Crypto Pty Ltd* [2024] FCA

373 at [44] (Meagher J); *Australian Securities and Investments Commission v Johnston* [2009] FCA 1276 at [10] to [12] (Siopis J); *Australian Securities and Investments Commission v Ostrava Equities Pty Ltd* (2015) 107 ACSR 8; [2015] FCA 543; at [5]–[6].

I. WHO CAN A CLAIMANT SUE TO PROTECT AND/OR RECOVER ITS DIGITAL ASSET?

84. In circumstances where a claimant has suffered losses in a transaction involving digital assets such as cryptocurrency, the identity of the fraudster is often anonymous and his or her location unknown. As a result, claimants typically commence proceedings against crypto exchanges contending that the exchange is the trustee of the digital asset and seeking disclosure orders against the crypto exchange for information regarding the fraudster’s account and dealings with the crypto assets.
85. Claimants may also consider potential claims in equity and tort against crypto asset software developers. The English Court of Appeal in *Tulip*³⁸ held on an interlocutory basis that it was arguable that crypto asset software developers owed fiduciary and tortious duties to owners of crypto assets utilising their network.³⁹

J. WHAT STEPS CAN BE TAKEN TO ENFORCE A COURT ORDER REGARDING A DIGITAL ASSET WHEN THE CLAIMANT DOES NOT HAVE ACCESS TO THE ASSET?

86. Where the transfer of digital assets is controlled by digital private keys obtaining disclosure orders requiring disclosure of details of the private keys is critical. It is particularly challenging to enforce a court order against crypto assets where the crypto asset is associated with private keys kept in a cold wallet in the possession of an unknown party.⁴⁰ This is because a cold wallet is not connected to the internet and making the private key extremely difficult to trace. A claimant may have to wait until

³⁸ *Tulip Trading Limited (A Seychelles Company) v Bitcoin Association For BSV & Ors* [2023] EWCA Civ 83.

³⁹ See the discussion of the decision in the article “*Enforcement Issues and Strategies in Crypto-Related Fraud and Asset Recovery Disputes*” by Wendy Lin and Leow Jiamin, CRYPTOCURRENCY & NFTs - September 2023, National University of Singapore.

⁴⁰ “*Enforcement Issues and Strategies in Crypto-Related Fraud and Asset Recovery Disputes*” by Wendy Lin and Leow Jiamin, CRYPTOCURRENCY & NFTs - September 2023, National University of Singapore.

the fraudster transfers the crypto asset in exchange for cash as such transactions would be recorded on the public blockchain ledger and traceable.⁴¹

K. WHAT REGULATORY REGIME APPLIES IN AUSTRALIA TO DIGITAL ASSETS?

87. In October 2021, ASIC issued Information Sheet 225 (INFO 225) to assist in understanding the regulatory landscape in Australia for cryptocurrency as provided for by the *Corporations Act* and the *Australian Securities and Investments Commission Act 2001*.⁴² By way of example, INFO 225 explains that:

- a. If you are issuing crypto-assets that fall within the definition of a 'financial product', Australian laws apply, including the requirement to hold an Australian financial services (AFS) licence;
- b. If you are giving advice, dealing, providing insurance, or providing other intermediary services for crypto-assets that are financial products a range of Australian laws apply, including the requirement to hold an AFS licence;
- c. If you are operating a market for crypto-assets that are financial products, a range of Australian laws apply, including the requirement to hold an Australian market licence;
- d. If you are operating an investment product that offers investors exposure to crypto-assets, a range of Australian laws may apply.

88. On 4 December 2024, ASIC updated INFO 225 by issuing a consultation paper on the proposed regulatory guidance of digital assets. The consultation paper sets out details of ASIC's proposed approach to licensing digital asset businesses under the Australian Financial Services License (**AFSL**) licensing regime and the Australian Market License regime.⁴³ Therefore, those advising persons or entities operating digital asset businesses or products need to be familiar with these licensing requirements.

⁴¹ "Enforcement Issues and Strategies in Crypto-Related Fraud and Asset Recovery Disputes" by Wendy Lin and Leow Jiamin, CRYPTOCURRENCY & NFTs - September 2023, National University of Singapore

⁴² See <https://asic.gov.au/regulatory-resources/digital-transformation/crypto-assets/>

⁴³ CONSULTATION PAPER 381: Updates to INFO 225: Digital assets: Financial products and services; <https://download.asic.gov.au/media/ncfckqeq/cp381-published-4-december-2024.pdf>

L. EXAMPLES OF ENFORCEMENT ACTION BY ASIC AS THE CORPORATE REGULATOR OF DIGITAL ASSETS IN AUSTRALIA

89. ASIC utilises a wide range of regulatory and enforcement tools, such as guidance, licensing, compliance and enforcement action to protect consumers and uphold market integrity in the digital asset sector.⁴⁴

Australian Securities and Investments Commission v Bit Trade Pty Ltd (No 2) [2024] FCA 1422 (Bit Trade)

90. On 23 August 2024, Nicholas J delivered judgment in *Bit Trade* finding for ASIC that Bit Trade contravened s994B(2) of the design and distribution obligations in Part 7.8A of the *Corporations Act* by issuing, granting or making available a financial product to purchase digital assets on the digital asset exchange known as “Kraken”.
91. In *Australian Securities and Investments Commission v Bit Trade Pty Ltd (No 2) [2024] FCA 1422*, Nicholas J ordered that the Australian operator of the Kraken crypto exchange ordered to pay a pecuniary penalty of \$8 million for unlawfully issuing a credit facility to more than 1100 Australian customers.

Australian Securities and Investments Commission v Web3 Ventures Pty Ltd [2024] FCA 64 (Web3)

92. In *Web3*, Jackman J accepted ASIC’s contention that the operator of an online platform offering crypto related financial products contravened s911A of the *Corporations Act* by offering a financial product that was a managed investment scheme and thereby carrying on a financial services business without holding an Australian Financial Services Licence (AFSL).⁴⁵
93. In a subsequent judgment concerning the award of a pecuniary penalty, Jackman J held that the operator of the online platform was to be relieved of liability for a pecuniary penalty due its constrained financial circumstances.⁴⁶

⁴⁴ AIC media release issued 4 December 2024; <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-266mr-asic-invites-feedback-on-proposed-updates-to-digital-asset-guidance/>.

⁴⁵ *Australian Securities and Investments Commission v Web3 Ventures Pty Ltd [2024] FCA 64* at [54], [85].

⁴⁶ *Australian Securities and Investments Commission v Web3 Ventures Pty Ltd [2024] FCA 578* at [79].

M. CONCLUDING REMARKS ON CRYPTOCURRENCY

94. The use of digital assets like cryptocurrency in the world economy is increasingly important. This is illustrated by the announcement in January 2025 by President Trump that his administration will evaluate whether to create a "national digital asset stockpile". It is also rumoured that President Trump intends to create a strategic reserve of digital tokens like bitcoin. However, in Australia there continue to be naysayers. For example, in November 2024, the Reserve Bank Governor, Ms Bullock is quoted as saying:

“Don’t call it an alternative currency,” she said. “It’s not a currency, it’s not money, it’s being used as some sort of asset class.”

95. It is appropriate to conclude with an excerpt of Ralph Merkle’s description of Bitcoin:⁴⁷

“Bitcoin is the first example of a new form of life. It lives and breathes on the internet. It lives because it can pay people to keep it alive. It lives because it performs a useful service that people will pay it to perform. It lives because anyone, anywhere, can run a copy of its code. It lives because all the running copies are constantly talking to each other. It lives because if any one copy is corrupted it is discarded, quickly and without any fuss or muss. It lives because it is really transparent: anyone can see its code and see exactly what it does.

It can't be changed. It can't be argued with. It can't be tampered with. It can't be corrupted. It can't be stopped. It can't even be interrupted.

If nuclear war destroyed half of our planet, it would continue to live, uncorrupted. It would continue to offer its services. It would continue to pay people to keep it alive.

The only way to shut it down is to kill every server that hosts host it. Which is hard, because a lot of servers hosted, in a lot of countries, and a lot of people want to use it...”

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16 March 2025

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⁴⁷ Merkle, Ralph. “DAOs, *Democracy and Governance*.” *Cryonics*, vol.37, no.4, Jul.-Aug.2016, Alcor, pp28-40, www.alcor.org.

ANNEXURE - A

GUIDE TO DIGITAL ASSET AND CRYPTOCURRENCY TERMINOLOGY

Re Blockchain Tech Pty Ltd [2024] VSC 690 at [66]

16. Blockchain is a peer-to-peer network. It acts as a public ledger that stores data in 'blocks'. The blocks consist of chunks of data, strung together and timestamped, which become a part of the Blockchain timeline. Each 'block' is given a timestamp when it is added to the chain, and all blocks are linked together to form a shared database. As a database, Blockchain stores information electronically in a digital format, and is most commonly known as a decentralised database to store the history of cryptocurrency transactions. The database is viewable to anyone, and the transactions are transparent and permanently recorded. A major benefit of Blockchain technology is that it is secure, decentralised and enables the transfer of cryptocurrencies for little cost.
17. A cryptocurrency exchange is a platform that matches buyers of cryptocurrency with sellers of cryptocurrency or fiat currency. It works like an exchange for any other asset. A cryptocurrency exchange usually has one or more fiat currency 'payment gateway' companies, which deal with transactions involving fiat currency, such as where a user sells cryptocurrency for fiat currency.
18. A cryptocurrency token is a virtual currency token that constitutes a tradeable asset. A token is 'owned' (ie each is an individual asset), has a unit of value and resided on its own Blockchain, meaning that a token cannot exist without underlying cryptocurrency.
19. A cryptocurrency wallet is a physical device or software program used to store cryptocurrency and enable the sending and receiving of cryptocurrency transactions. The wallet allows a receiving user to retrieve a public key to which a sender, who wants to send that receiving user cryptocurrency, can send cryptocurrency. Some wallets contain more than one address to and from which cryptocurrency transfers can be made. Wallets can also be divided into 'subwallets' that allow a user to compartmentalise her or his cryptocurrency holdings. There are two types of cryptocurrency wallets: software (or 'hot') wallets and hardware (or 'cold') wallets.
 - (a) A 'hot' wallet comes in the form of a computer program that holds private keys online in 'custody' wallets' or an application on a laptop or mobile phone, which stores private keys on the local device. 'Hot' wallets are generally seen as less secure because if a problem occurs with the custodian, the user's web browser or hard drive, the user could lose the private key to her or his wallet, resulting in the permanent loss of cryptocurrency.
 - (b) A 'cold' wallet is a small physical device that stores cryptocurrency offline, and keeps a user's private key off the internet. To use a 'cold' wallet, a user needs to connect the physical device to a computer (usually by a USB port) and use software to make transactions from that cold wallet.

Tulip Trading Ltd v Bitcoin Association for BSV [2023] EWCA Civ 83

21. In the bitcoin scheme transactions are recorded in a ledger or database known as a blockchain, with each network having its own ledger. The blockchain constitutes a public registry recording every transaction. A given amount of bitcoin is simply a number held at a certain digital address. A transaction simply involves reducing the value at one address and correspondingly increasing it at another. Whether new addresses are created in this process does not matter for present purposes, as different cryptocurrencies work in different ways. The amounts held at every address are public, but the identity of the parties is not. The blockchain does not reveal the relationship between the digital addresses and any persons.

22. Each digital address is associated with a pair of public and private cryptographic keys. The public key identifies the address on the network. The relevant private key is the means by which bitcoin can be dealt with. The holder of the private key uses it to cryptographically sign a record of the transaction moving bitcoin from one address to another. The record is called a cryptographic hash. The public/private key pair means that the person signing with the private key is proving that they are associated with the public key (and so the address), without revealing the private key itself. The hash ensures that any attempt to alter the record would be noticeable, because even the smallest change would alter the hash.
23. For each network there are devices on the network that undertake "mining". This is the means whereby transactions are validated. The latest transactions are gathered together into a block, which also includes a hash of the previous block (hence each block is chained to its predecessor, making a 'blockchain'). The miners work in competition with each other to produce an appropriate hash of this new block. The competition is to find a unique 'number used once' or nonce, which causes the hash of the new block to have certain defined characteristics.

This is called a 'proof of work'. Blocks that have been validated this way are broadcast to the network and incorporated into further work. Miners receive both transaction fees and new bitcoin.

"Is Cryptocurrency Property?", Jackman J, Commercial Law Association, 21 June 2024

"...cryptocurrency is created from code, can be used to make payments, and does not exist physically in the form of notes or coins. It is created using blockchain technology, a blockchain being a ledger method for recording transactions. This data is organised in blocks or groups across many computers that are linked and secured, but each block can only hold a certain amount of information, so new blocks are added to the ledger and this forms a chain. Blockchain refers to each block being chained to its predecessor. Each block has its own unique identifier, which is known as a cryptographic hash. The hash protects the information in the block from anyone without the required code and protects the block's place on the chain from being tampered with.

People interact with blockchain by creating a "wallet", which acts like a user account. There are many different kinds of wallet, but at its core, a wallet is made of two keys that provide access to the person's underlying cryptocurrency. First, there is a public key that is an alphanumeric identifier, which functions as an address or location for the user. This is publicly disclosed, for example for the purpose of providing a "destination" for someone to send cryptocurrency to. Second, there is a private key, which is an alphanumeric code that acts as a confidential password and is used to "sign" transactions and prove "ownership" of currency. A private key should not be shared, as holding a private key means having access to the wallet and the underlying cryptocurrency, and confers practical control over the cryptocurrency.

For each network there are devices that undertake "mining", being the means whereby transactions are validated. The latest transactions are gathered together into a block, which also includes a hash of the previous block. The miners work in competition with each other in their virtual gladiators' cages to produce an appropriate hash of this new block, and once blocks have been validated in this way they are broadcast to the network and incorporated into further work. They are called "miners" because they are then rewarded with newly mined cryptocurrency as well as rewards offered by other users who wish their transactions to be included in the blockchain (Kelvin Low, (2020) 136 LQR 345).

The digital ledger represents a reliable history of valid dealings in the cryptocurrency, thereby preventing "double-spending", that is, inconsistent transfers of the same cryptocurrency to different recipients. Typically there is no single person or entity having responsibility for maintaining the ledger or any right to do so. The rules governing dealings are often established by the informal consensus of participants, rather than by contract or in some other legally binding way. The rules tend to be self-enforcing in practice because only transactions made in compliance with them and duly entered in the ledger will be accepted by participants as valid.

The report of the United Kingdom Jurisdiction Taskforce entitled “Legal statement on cryptoassets and smart contracts” in November 2019 provided a useful list of the principal novel and characteristic features of cryptoassets (at [31]) as being: intangibility, cryptographic authentication, use of a distributed transaction ledger, decentralisation, and rule by consensus.”

TYPES OF CRYPTO ASSETS

1. Cryptocurrencies (Coins)

Examples: Bitcoin (BTC), Ethereum (ETH), Litecoin (LTC), etc.

What They Are: These are digital currencies used as a store of value or a medium of exchange. They are typically designed to function like traditional money (i.e., for transactions, savings, etc.).

Key Characteristics:

- Decentralized and secure (often using blockchain technology).
- Serve as a store of value or a unit of account.
- Used for peer-to-peer transactions.

Why They're Different: They are primarily used for financial transactions and value transfer, and their value is typically based on the supply and demand of the coin itself.

2. Tokens (Utility Tokens)

Examples: Binance Coin (BNB), Uniswap (UNI), Chainlink (LINK).

- **What They Are:** These are digital tokens that often represent a specific utility within a particular blockchain ecosystem. They are generally used to pay for services, access specific features, or participate in governance decisions within a decentralized application (dApp)
- **Key Characteristics:**
 - Used within specific platforms or decentralized networks.
 - Can represent access to services, voting rights, or rewards.
 - Some tokens (like Binance Coin) can also serve as a form of payment for transaction fees on their respective platforms.
- **Why They're Different:** Utility tokens don't serve as traditional currencies but instead have specific use cases within certain platforms or ecosystems, such as paying for transaction fees, accessing services, or participating in governance.

3. Security Tokens

Examples: Polymath (POLY), tZERO (TZROP).

- **What They Are:** Security tokens represent ownership or equity in an asset, such as real-world assets like real estate, stocks, or bonds. These are regulated and are considered financial securities, meaning they are subject to government regulations (just like traditional securities).
- **Key Characteristics:**
 - Represent a claim on assets or profits.

- Often tied to real-world value or ownership of physical assets.
- Typically subject to legal and regulatory frameworks (e.g., securities laws).
- **Why They're Different:** Security tokens are regulated by authorities and offer a more direct connection to real-world assets, whereas most cryptocurrencies are not subject to such regulations and don't represent ownership of external assets.

4. Stablecoins

Examples: Tether (USDT), USD Coin (USDC), DAI.

- **What They Are:** Stablecoins are cryptocurrencies designed to maintain a stable value by being pegged to an underlying asset, like a fiat currency (e.g., USD) or a basket of goods. They help mitigate the price volatility that is often seen in traditional cryptocurrencies like Bitcoin and Ethereum.
- **Key Characteristics:**
 - Pegged to stable assets like the US dollar, gold, or other assets.
 - Designed to reduce volatility.
 - Can be used as a stable medium of exchange or store of value.
- **Why They're Different:** Stablecoins are specifically designed to be less volatile than other cryptocurrencies, making them useful for trading, saving, or transacting without the price swings that other cryptocurrencies experience.

5. Non-Fungible Tokens (NFTs)

Examples: CryptoPunks, Bored Ape Yacht Club, Decentraland (MANA).

- **What They Are:** NFTs are unique digital assets that represent ownership of a specific item, often digital art, collectibles, or virtual goods. Unlike cryptocurrencies, which are interchangeable (fungible), each NFT is one-of-a-kind (non-fungible).
- **Key Characteristics:**
 - Represent ownership or proof of authenticity of a unique item.
 - Built using blockchain technology, typically on Ethereum.
 - Cannot be exchanged for one another because they are not identical.
- **Why They're Different:** NFTs are unique and cannot be replicated or exchanged on a one-to-one basis like cryptocurrencies. They are often used for digital art, collectibles, and gaming items.

6. Governance Tokens

Examples: Maker (MKR), Aave (AAVE), Compound (COMP).

- **What They Are:** Governance tokens are used to participate in decision-making within decentralized protocols or platforms. Holders of governance tokens have voting power, enabling them to propose and vote on changes to the system (such as protocol upgrades or changes to the tokenomics of the platform).
- **Key Characteristics:**
 - Provide voting power on protocol decisions.
 - Often used in decentralized finance (DeFi) platforms.
 - Holders can influence how a protocol evolves.

- **Why They're Different:** Governance tokens give users a voice in the development and management of decentralized protocols, making them distinct from other types of crypto assets that don't grant such power.

7. Wrapped Tokens

Examples: Wrapped Bitcoin (WBTC), Wrapped Ether (WETH).

- **What They Are:** Wrapped tokens are cryptocurrencies that are pegged to the value of another cryptocurrency or asset. For example, WBTC is Bitcoin that has been "wrapped" to exist as an ERC-20 token on the Ethereum blockchain.
- **Key Characteristics:**
 - Tied to the value of another asset (e.g., Bitcoin, Ethereum).
 - Allow assets to be used in different blockchain ecosystems (e.g., Bitcoin on the Ethereum network).
 - Maintain the value of the underlying asset while gaining new functionalities on other blockchains.
- **Why They're Different:** Wrapped tokens allow for cross-chain interoperability, meaning assets can be used on different blockchains, expanding their utility.