



Fountain Court
CHAMBERS



Bitcoin, blockchain and fintech: Litigation in the new world

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Bitcoin is property



AA v Persons unknown [2020] 4 WLR 35, Bryan J

A crypto asset like bitcoin, whilst not a chose in possession or a chose in action, is property because it is:

- definable
- identifiable by third parties
- capable in its nature of assumption by third parties
- has some degree of permanence

Bitcoin is therefore capable of being the subject of an interim proprietary injunction. Followed in New Zealand: **Ruscoe and another v Cryptopia Ltd** [2020] NZHC 728

Low, LQR 2020, 136 (Jul), 345-349 has criticized Bryan J's reasoning, but not the result. Low's view is that bitcoin is property because it is a chose in action. In **Fetch.AI Ltd v Persons Unknown** [2021] EWHC 2254 HHJ Pelling QC held at [9] (without considering **AA v Persons Unknown**) that the cryptocurrencies in that case were property because they were choses in action.

Whichever is the correct reasoning, since bitcoin is property it would seem to follow that bitcoin can be made the subject-matter of a trust – see e.g. Lewin on Trusts, 20th edition, at para 2-034.

Wang v Darby [2021] EWHC 3054

See also criminal cases in this country which have held crypto currencies are property which can be subject to confiscation proceedings or restraint orders or property freezing orders, e.g. **R v Teresko** [2018] Crim LR 81; **DPP v Briedis** [2021] EWHC 3155 (Admin)

See also Singaporean case **B2C2 Ltd v Quoine Pte Ltd**



Footnote on property



Quoine Pte Ltd v B2C2 Ltd [2020] SGCA(I) 02
vs. ***Ruscoe v Cryptopia Ltd*** [2020] NZHC 728

Objective common intention to create trust. 10 factors per
Briggs J ***Re Lehman (“RASCALS”)*** [2010] EWHC 2914 (Ch)
[225]

Tracing (not following)



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Contract



- November 2019, the *UK Jurisdictional Task Force* published a *Legal Statement on crypto assets and smart contracts*
- November 2021, the *Law Commission* published its *Advice to Government on Smart legal contracts*
 - What sorts of contracts could exist in the crypto world
 - natural language
 - hybrid
 - fully automated



Contract



- November 2019, the *UK Jurisdictional Task Force* published a *Legal Statement on crypto assets and smart contracts*
- November 2021, the *Law Commission* published its *Advice to Government on Smart legal contracts*
 - Identification of a counterparty
 - Intention to create legal relations
 - Subjective elements of common law causes of action, such as knowledge, reliance or mistake



Definition of money?



Dr Mann definition: only those **chattels** are money to which such character has been attributed by law **i.e. by or with the authority of the state**

On this definition, bitcoin is not money because:

- It is not a chattel; and
- It is not used by or with the authority of the state; rather it is a private medium of exchange.

Cf Proctor definition of money which does not require money to be a chattel. However, even on the Proctor definition bitcoin is not money because it is not authorised by the state.



Statement on Crypto assets



In November 2019, the UK Jurisdictional Task Force published a legal statement on crypto assets and smart contracts (“the Statement”):

- The Statement concluded that crypto assets, such as bitcoin, are property.
- This part of the Statement was referred to by Bryan J in **AA v Persons unknown** and held by him to be correct.
- The Statement also opined (para 130) that crypto assets, such as bitcoin, are not “goods” and therefore do not fall within the scope of the Sale of Goods Act. Benjamin, Sale of Goods, 11th edition, agrees (para 1-080).
- However, the Statement does not address the separate question of whether crypto currencies are money (see the Statement para 11 and footnote 71).



My view on whether bitcoin is money



In my view Crypto currencies such as bitcoin are property but they are not money because:

- They are not chattels; and
- They are not authorised by the state.

i.e. I think the Mann definition of money is correct.



Why might it matter whether bitcoin is money



- May affect availability of remedies such as:
 - (a) Whether damages representing currency loss are available for late delivery of bitcoin by seller;
 - (b) In event of seller delaying transfer of the bitcoin, right of buyer to treat delay in transfer as repudiatory breach;
 - (c) In event of buyer failing to pay for the bitcoin, right of stoppage in transit by seller.

Above more likely to be available if bitcoin is not money.

- On insolvency, under **rules 14.1 and 14.2 of the Insolvency Rules 2016**, a proof for a debt incurred or payable in a foreign currency must be converted into sterling as at the date of the insolvency. If bitcoin is money, this provision could be applicable. If so, currency conversion losses cannot be claimed (**Lehman** [2017] UKSC 38).



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