



Treatment of Cryptocurrency as property under English Law and in other jurisdictions

More and more cases in England and Wales are now dealing with cryptocurrencies, one way or another.

Thankfully the English legal profession has been quick to provide a clarification as to the status of the cryptocurrencies under the English law.

Perhaps the first logical assumption that would come to mind would be that they are a 'currency', however that is entirely incorrect and still a cause for confusion.

Therefore, to give a clear guidance on this then relatively new category of assets, it was considered whether the cryptocurrency could fall under the definition of 'property'. The 'property' under English law are all personal things that are either in possession or action. The legal statement on Crypto assets and Smart contracts published in November 2019 by the UK Jurisdictional Taskforce, provided helpful comments as to why the adoption of the usual definitions for property in English law in the strict sense would not be helpful, however when the definitions were looked at more broadly and outside the box, it was established that even though cryptocurrency might not be a thing in action, that does not mean it cannot be treated as property. It had significant connotations if cryptocurrency like any other property, can be subject to enforcement and injunctions.

This position was considered and upheld in AA v Persons Unknown [2019] EWHC 3556 (Comm) where a proprietary injunction was sought in relation to Bitcoin. The judge referred to the legal statement from UKJT and confirmed that Bitcoins constitute a property therefore an injunction can be sought. Very helpfully, Lord Wilberforce's classic definition of property from National Provincial Bank v Ainsworth [1965] 1 AC 1175 was provided in the judgement and property was classified as something 'being definable, identifiable by third parties, capable in their nature of assumption by third parties, and having some degree of permanence or stability'.



Clearly cryptocurrency meets those criteria. The same conclusion was also reached by the Singapore International Commercial Court in *B2C2 Limited v Quoine PTC Limited* [2019] SGHC (I) 03 [142].

Other jurisdictions are now adopting the same approach. Recently during March 2023, Hong Kong in the case of *Gatecoin Limited v CWUMPO* [2023] HKCFI 914 the judge adopted the same definition from *National Provincial Bank v Ainsworth* [1965] 1 AC 1175 to analyse the meaning of 'property'. It is interesting to note that in this case the HK court did not distinguish or specifically consider the different characteristics of the 45 cryptocurrencies traded on the Gatecoin trading platform. Instead, the HK court used above-mentioned four criteria and came to the same conclusion as the English court and held that cryptocurrencies are 'property' under HK law.

The Author is thankful for the contributions from Anne Wu, Attorney-at-law from **V&T Law Firm** in Shanghai, China.

It is presumed that this categorisation will be also adapted by others in an attempt to modernise the law and make it workable for digital assets. The family court in England and Wales has already indicated treating cryptocurrency like any other asset and it is highly likely that several other family courts around the world will follow suit. Cryptocurrency is a relatively new form of marital asset and will become the 'norm' in cases now and years to come. Having cryptocurrency clearly identified as 'property' makes it easier but there are still other issues to uncover when dealing with digital assets. Practitioners from all jurisdictions should come together and share their expertise to allow the courts to move forward and adapt to the needs of the individuals. iFLG will be providing regular updates on this subject when available and are keen to hear from family law specialists from other jurisdictions regarding their experiences.

If this area is of particular interest to you, please contact: Agata Osinska & Prof David Hodson OBE KC(Hons) MCI Arb

Judgments:



- *Provincial Bank v Ainsworth* [1965] 1 AC 1175
- *AA v Persons Unknown* [2019] EWHC 3556 (Comm)
- *Gatecoin Limited v CWUMPO* [2023] HKCFI 914

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