HIGH COURT OF AUSTRALIA

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IN THE HIGH COURT OF AUSTRALIA

HOBART REGISTRY

BETWEEN **ADAM POULTON**

Appellant

and

JEFF CONRAD

Respondent

APPELLANT'S SUBMISSIONS

Part I: Certification

1. These submissions are in a form suitable for publication on the internet

Part II: Statement of Issues

2. Is Bitcoin property for the purposes of the common law of Australia?[1]
3. If Bitcoin is property, can Bitcoin be the subject of the torts of detinue or conversion?[2]
4. Was the majority of Full Court (**FC**) correct to deny the appellant's appeal on the ground that the appellant was precluded from advancing the argument that Bitcoin was not property on the basis that it was a new argument before the Full Court?[3]

Part III: Section 78B Notices

5. No notices under s 78B of the Judiciary Act 1903 (Cth) are required.

Part IV: Reasons for Judgment Below

6. The reasons of the Magistrates Court of Tasmania (Magistrate R Webster) are *Jeff Conrad v Adam Poulton* of 6 September 2023 File No M/2018/2275 and are unreported (**MC**) (CAB 5-36).
7. The reasons of the Supreme Court of Tasmania (Brett J) are *Adam Poulton v Jeff Conrad* [2025] TASSC 2 (**SC**) (CAB 40-46).
8. The reasons of the Full Court of the Supreme Court of Tasmania (Shanahan CJ, Estcourt and Jago JJ) are *Adam Poulton v Jeff Conrad* [2025] TASFC 7 (**FC**) (CAB 52-80).

Part V: Relevant Facts

9. The appellant and respondent had known each other for many years. In mid to late 2013

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[1] Ground 1.
[2] Ground 1.
[3] Ground 2.

they discussed the possibility of the respondent investing in Bitcoin (MC [12]-[14] CAB 9). By about 24 December 2013 the respondent paid the appellant $10,000 in three instalments to invest on his behalf in Bitcoin (MC [9] CAB 8). The instalments are not disputed on the pleadings. The appellant contended that any dealings with the respondent were with Get Paid in Bitcoin Pty Ltd (**GPC**) of which the appellant was a director. This was rejected by the Magistrate (MC [4] CAB 7 and MC [45] CAB 17).

10. The Magistrate found that the appellant told the respondent he had purchased 10.5 Bitcoin with the $10,000 (MC [14] CAB 9 and [45] CAB 17), not 10.05 as the appellant contended. About July 2014 the appellant provided the respondent with a paper wallet that contained 6 Bitcoin (MC [9] CAB 8 (not disputed on the pleadings)).

11. On 1 August 2017 all Bitcoin "forked". For every one Bitcoin, one Bitcoin Cash was created. About 24 October 2017, all Bitcoin "forked". For every one Bitcoin, one Bitcoin Gold was created (MC [9] CAB 8 (not disputed on the pleadings)).

12. In September 2017, the respondent demanded from the appellant 4.5 Bitcoin with 4.5 Bitcoin Cash and 4.5 Bitcoin Gold (MC [15] CAB 9-10 and MC [93] CAB 30). The appellant and the respondent met in November 2017. After the meeting the appellant transferred 3.000186 Bitcoin to the respondent (MC [16]-[17] CAB 10, [93] CAB 30 and MC [102] CAB 31). The appellant's evidence was that it was agreed he would retain the 1.05 Bitcoin, the Bitcoin Cash and Bitcoin Gold as a fee (MC [34] CAB 14). That was rejected by the Magistrate (MC [45] CAB 17).

13. On 5 March 2018 the respondent demanded 1.5 Bitcoin, 4.5 Bitcoin Gold and 4.5 Bitcoin Cash from the appellant (MC [93] CAB 30).

14. The respondent sued in the Magistrates Court of Tasmania (Civil Division). The hearing began in November 2020 and end on 27 January 2022. The Court delivered its decision on 6 September 2023 (CAB 5, MC [73] CAB 25 and MC [112] CAB 34).

15. The Magistrate assessed damages for conversion of 1.5 Bitcoin, 4.5 Bitcoin Gold and 4.5 Bitcoin Cash to be $43,000. Exemplary damages of $4,500 were awarded (MC [112] CAB 34) and the appellant was allowed $1,500 by way of a fee (MC [73] CAB 25). Interest was allowed in favour of the respondent to the extent it took the damages and interest to the Court's jurisdictional limit of $50,000 (MC [116]-[117] CAB 35-36).

16. The appellant appealed to the Supreme Court of Tasmania on 3 October 2023. On 7 February 2025, Brett J dismissed the appeal finding inter alia the appellant was in possession of the relevant crypto, not GPC (SC [31]-[32] CAB 45), there was no agreed

fee, and the fee assessed was reasonable (SC [34]-[37] CAB 46).

17. The appellant appealed Brett J's decision to the Full Court of the Supreme Court of Tasmania on 25 February 2025. On 19 September 2025 the Full Court dismissed the appeal. Shanahan CJ held that the appellant was precluded from advancing the argument that Bitcoin was not property, as though argued before the Magistrate it was not argued before Brett J and allowing it now would offend principles of finality, procedural fairness, and the prohibition on reviving abandoned grounds (FC [42]-[50] CAB 63-65). Jago J concurred with Shanahan CJ on that question (FC [99] CAB 80).

18. Estcourt J dissented on that question. Estcourt J held that the ground of appeal, taken before Brett J, could be taken as wide enough to embrace the appellant's legal argument before the Full Court as to the nature of Bitcoin. Estcourt J inter alia rejected the contention that there was significant injustice and prejudice in allowing that legal argument to be raised. The status of Bitcoin was a matter of law. Any injustice in allowing a hearing on that aspect could be remedied by costs (FC [69]-[73] CAB 69). Estcourt J found Bitcoin to be property and that it may be the subject of detinue and conversion (FC [74]-[97] CAB 70-79).

Part VI: Argument

19. **Ground 1 – Introduction:** Part VI(1) outlines the approach of the Magistrate, Brett J, and the Full Court. Part IV(2) describes decisions dealing with the status of Bitcoin. Part VI(3) shows why Bitcoin is not property at common law. Part VI(4) submits, in the alternative, that, if Bitcoin be property, Bitcoin may not be the subject of detinue or conversion. Part VI(5) shows why the plurality of the Full Court were wrong not to decide the substantive questions before the Full Court, namely: whether Bitcoin was property, and whether the claims in detinue and conversion had been established.

20. **Part VI(1) – Introduction – Bitcoin.** Bitcoin is both the name of an item of information described as "cryptocurrency" (**crypto**) and the name of a protocol.[4] Bitcoin (like Bitcoin Gold and Bitcoin Cash) is nothing more than a string of code in a distributed computer database whether described as a ledger or block.[5] It relies on a computer program described as Bitcoin Core.[6] Bitcoin Cash and Bitcoin Gold are simply further forms of crypto.

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4 Andreas Antonopoulos and David Harding *Mastering Bitcoin: Programming the Open Blockchain* (3ed) (Kindle Edition) (**Antonopoulos**) 32.
5 Simon Gleeson *The Legal Concept of Money* (OUP 2018) (Gleeson) [1.16].
6 Antonopoulos Ch 3.

21. The Bitcoin system (protocol) consists of a decentralized peer-to-peer network ('nodes') relying on cryptography, a public transaction journal ('ledger', 'database', 'the blockchain'), rules for independent transaction validation ('consensus rules'), and a mechanism for reaching a consensus ('proof-of-work algorithm'). Access to bitcoins is controlled by a "private key". A transaction is effected by pairing a "public key" and a "private key". Bitcoin simply utilised existing computer concepts and methods.[7]

22. Access to Bitcoin is controlled by elements including: an address to receive a transfer of Bitcoin; a public key from which an address is derived; a private key from which the public key is derived and an entry on the blockchain as to the holding of a Bitcoin or part thereof ('token') that is associated with the public key or a hash of the public key. The "private key" is an alphanumeric code recognised by the Bitcoin system and by human users of the system. To effect a transaction in Bitcoin, a person or machine must pair a "Private Key" with its "Public Key". The system ascribes a numerical value to the token. A Bitcoin is 100,000,000 satoshi.[8]

23. The public key is public. It is not possible to exclude others from details of the public key. The public key remains where it is on the blockchain. A public key is simply a string of numbers and letters and in some cases it may be a hash of the public key.[9]

24. The amount stored on the blockchain, the unspent item is called the "unspent transaction output" or "UTXO". An amount to be transmitted by a transaction is sent to a public address. A public address is derived using prescribed cryptography to create a public address that may receive a bitcoin transaction from another public addresses.[10]

25. The public and private keys are often stored in a 'wallet'. The wallet may be a piece of paper with those keys written on it, including in an encrypted form. That may be called a 'cold wallet'. Electronic wallets may simply be software on a computer or other device that may be connected to a computer. Using such devices involves further PINs or passwords. Wallets connected to the internet are called hot wallets. Access to some hot wallets may be recovered using a seed phrase.[11]

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[7] See *Tulip Trading v Van der Laan* [2023] 4 WLR 16 (**Tulip**) [17]-[40]; *Yeates v The King* [2025] VSCA 288 (**Yeates**) [21]-[28], *Ruscoe v Cryptopia Ltd (in liq)* [2020] 2 NZLR 809 (**Ruscoe**) [17]-[21]; *Re Blockchain Tech Pty Ltd* (2024) 76 VR 578 (**Blockchain**) [64]-[66]; *ASIC v Web3Ventures Pty Ltd* (2024) 172 ASCR 327 (**Web3**) [7]-[15] – the successful appeal did not concern the factual findings, (2025) 308 FCR 552; Expert Evidence H J Richards Appellant's Book of Further Material (FM) 8-18; Antonopoulos chs 1-4, 6-8 and 10-12.

[8] Ibid.

[9] Tulip [16]-[40]; Yeates [27]; Antonopoulos 129-130. Hashing is converting data, such as text, into a fixed-length string of characters called a hash value.

[10] See footnote 7.

[11] Yeates [28] and [83]; *Ping Fai Yuen v Fun Yung Li* [2026] EWHC 532 (KB) [2] (**Ping Fai**).

26. Bitcoin is distinguished from some other forms of crypto that are asset backed - some are called stable coins. There is sometimes an underlying resource in the case of such crypto (e.g. currency backed) and/or an underpinning chose in action.[12] The decision of *D'Aloia v Persons Unknown*[13] (**D'Aloia**) involved such a crypto (USDT, Tether backed by USD),[14] as did the recent Full Federal Court decision of *ASIC v Wallet Ventures Pty Ltd,*[15] (**Wallet Ventures**) involving TrueAUD. Unlike Bitcoin, those come with a promise by the issuer, and are sometimes backed by or related to a fiat currency.

27. **Reasoning of the Courts below:** The Magistrate ruled that Bitcoin was property (MC [85] CAB 28). The Magistrate cited *AA v Persons Unknown*[16] (**AA)** and the reference in that decision to the tests of property in *National Provincial Bank v Ainsworth*[17] (**Ainsworth**), the decisions of *B2C2 Limited v Quoine PTC Limited* (**Quoine**)[18] and *Shair.Com Global Digital Services Ltd v Arnold*[19] (**Shair**). The Magistrate referred to Ruscoe with its reliance on the Ainsworth tests, *Dixon v R*[20] (**Dixon**), *Henderson v Walker*[21] (**Henderson**) and *Commissioner of Police v Rowland*[22] (**Rowland**). The Magistrate also cited *Yanner v Eaton* (**Yanner**),[23] referred to Meagher, Gummow and Lehane's Equity: Doctrines and Remedies (4th ed 2002) (**MGL**),[24] applied the Ainsworth tests, and found further support in *ASIC v Remedy Housing Pty Ltd*[25] and *ASIC v A One Multi Services Pty Ltd*[26] to conclude that Bitcoin was property (MC [76]-[85] CAB 25-28).

28. The Magistrate then described detinue as inter alia requiring a person to make a specific demand for the return of goods; conversion as needing "a right to immediate possession of the goods"; and damages for the wrongful refusal to return the "goods" (MC [86]-[89] CAB 28-29). The Magistrate held both detinue and conversion were available, having held Bitcoin was property, without considering whether they were remedies that were

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12 See *Bybit Fintech Limited v Xin* [2023] SGHC 199 [1] (**ByBit**).
13 [2025] 1 WLR 821 [68].
14 Ibid [68]; also in the case of Bybit.
15 *ASIC v Wallet Ventures Pty Ltd* (2025) 309 FCR 447 [12]. Also see Ruscoe [21], quoting [30]-[31] of the *UK Law Commission Smart legal contracts Advice to Government* (Law Com No 401, 2021) (**UKLRSC**).
16 [2020] 4 WLR 35.
17 [1965] AC 1175.
18 [2019] SGHC (I) 03.
19 2018 BCSC 1512.
20 [2016] 1 NZLR 678.
21 [2021] 2 NZLR 630.
22 [2019] NZHC 3314.
23 (1999) 201 CLR 351.
24 [4-015].
25 [2021] FCA 673
26 [2021] FCA 1297.

only available in respect of goods. There was no discussion as to whether Bitcoin or crypto were goods. They are implicitly regarded as goods (MC [90]-[94] CAB 29-30).

29. Brett J held that there was no error in the Magistrate's determination of the claim in detinue and conversion (SC [38] CAB 46) holding that the appellant was in possession of the crypto, at all material times (SC [32] CAB 45).

30. In the Full Court, Shanahan CJ determined that the appeal should be dismissed without considering the actual single ground of appeal. Shanahan CJ did consider the question as to the nature of Bitcoin, albeit obiter. Shanahan CJ said Bitcoin was a species of wealth, traded widely and commercially as property and is to be recognised and treated as a proprietary interest. The relevant key is more than a collection of data or information, but the key is a set of transactional functionalities, and recognition as property would be consistent with its burgeoning legislative treatments (FC [51]-[52] CAB 66).

31. Shanahan CJ implicitly accepts that detinue and conversion is available in respect of Bitcoin, noting that the metaphysics and remedies of the nineteenth century are not suitable for the twenty first century and stating that the "central premise underpinning the common law concept of possession remains control, with an intent to exercise dominion…". In the case of Bitcoin, that is said to be represented by the relevant key or PIN. They are the contemporary means of securing proprietary rights and "by which dominion is claimed over entitlements to wealth" (FC [55] CAB 66).

32. Estcourt J initially describes the relationship between a person and an entitlement to Bitcoin as one of ownership. The person who has "the key to access the wallet," described as the holding at the address, is described as the owner. Estcourt J also says that relationship says nothing of the legal nature of Bitcoin (FC [77]-[79] CAB 70-71).

33. Estcourt J then, recognising that none of the decisions referred in the Magistrate's decision have decided that Bitcoin is property for the torts of conversion or detinue, states that the relationship with the Bitcoin software, signified by the control over the relevant digital key, is control over something that can be exercised. Thus, Estcourt J held the appellant was in possession of property and the property was amenable to the torts of conversion and detinue (FC [78]-[87] CAB 71-73).[27]

34. Estcourt J rejects the view in *Your Response Ltd v Datateam Business Media Ltd*[28]

[27] Estcourt J then cites Henderson and AA as supporting that view (FC [87]-[89] CAB 73).
[28] [2015] 1 QB 41

(**Your Response**) that information could not be the subject of a lien, and the decision in *OBG Ltd v Allan*[29] (**OBG**) that there could be no claim in conversion for wrongful interference with a chose in action because it could not be possessed. Estcourt J cites and quotes from Blockchain in support of his view, agrees with the analysis quoted from that decision though disagrees that Bitcoin could not be bailed (FC [90]-[91] CAB 77).

35. Estcourt J continues, concurring with the view in Your Response, that "there is a powerful case for reconsidering the dichotomy between choses in possession and choses in action, and for recognising a third category of intangible property. … property that is capable of assumption by third parties, that is rivalrous, that is capable of exclusive control, and that is susceptible of possession... should be amenable to at least, the torts involved in the present case, namely, conversion and detinue…" Estcourt concludes that Brett J did not err and that the appellant was in possession of relevant property for the purpose detinue and conversion (FC [93] and [97] CAB 78-79). Jago J, having concurred with Shanahan CJ in dismissing the appeal, stated that should the occasion arise to consider the substance of the appeal, then Her Honour would agree with the reasons and conclusions of Estcourt J (FC [100] CAB 80).

36. **Part VI(2) – Various Bitcoin and crypto decisions.** Under this heading VI(2), we put aside the decision the subject of this appeal. We particularly describe the reasoning in an ongoing case, Yeates (SLA pending). It is the only[30] Australian intermediate appellate decision fully to discuss the nature of Bitcoin. It is a unanimous decision of the Victorian Court of Appeal (**VSCA**). We dispute the VSCA's holdings, as will be apparent from the substantive submissions in Part VI(3).

37. Yeates allegedly stole Bitcoin contrary to s 72 of the *Crimes Act 1958* (Vic) by access to a seed phrase. The VSCA describes the nature of Bitcoin and what is property.[31] The VSCA rejected Yeates' submission that Bitcoin is information and therefore cannot be stolen. The VSCA discusses the nature of Bitcoin and why it was found to be property. The VSCA states that information is nothing more than knowledge; and on being disclosed "it is not changed or diluted". What changes is the number of people who share the information and its potential value, if further traded. The VSCA finds the "same is not true for Bitcoin". The VSCA states that Bitcoin is not information that

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29 [2008] 1 AC 1.

30 Wallet Ventures pre-dates Yeates and this decision. The Full Federal Court stated in Wallet Ventures at [12], underlining added: "while we appreciate that there is some controversy, or at least uncertainty, as to the nature of cryptocurrency at law, it was common ground on the appeal, and accepted by the primary judge, that TrueAUD is a species of property", a stablecoin, as highlighted by the Court.

31 Ibid [21]-[28] and [29]-[30].

remains immutable, and that it is rivalrous. The parties to the transaction never share the same value of the Bitcoin nor the same access to it.[32]

38. The VSCA finds control is "a characteristic which arises as a matter of fact from the way the software works" rather than as a matter of law. It is designed as a medium of exchange and rivalrous; it would be pointless if it did not solve the "double spend problem". Like any coin, physical or digital, it is possessed; "[o]wnership by one person prevents ownership by another".[33] The method to achieve being rivalrous is immaterial.[34]

39. The VSCA finds Bitcoin is intangible. The strings of code are the outward manifestation of transactions by participants in the system. It has a conceptual existence independent of any legal system and its users. It "is traded commercially and widely dealt with as property". Bitcoin has the same functionality as a physical coin, a token of economic and legal significance. The VSCA distinguishes the seed phrase and private key from the information representing the UTXO, describing them as information and the UTXO as unique on the system and rivalrous.[35]

40. The VSCA places weight on the description in the United Kingdom Law Commission reports[36] of the consequences of replicating the individual data items of a Bitcoin (crypto-token). All the copier of such data items gets "is data in a different system".[37] The new "data" is described as a distinct rivalrous crypto-token. The VSCA asserts that "the string of code that makes up a 'coin' on the Bitcoin ledger has no function except as manifesting the 'coin' on the network".[38]

41. The VSCA concludes that Bitcoin satisfies the Ainsworth tests. The VSCA finds Bitcoin is more than mere information.[39] Bitcoin is an intangible "thing", as the data manifesting it is a set of unique alphanumeric codes, that are "capable of isolation from other assets"; the public key cannot be confused with any other; the distributed system gives the data stability; the identity of what is going on is the digital token.[40] The

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[32] Ibid [66]-[69].
[33] Ibid [70]-[71].
[34] Ibid [73]-[76].
[35] Ibid [74]-[75] and [83]. However, see D Fox *Property Rights in Money* (Oxford 2008) [1.144]-[1.151].
[36] UK Law Commission, *Digital Assets* (Law Com No 412, 2023) (**UKLCR**).; UK Law Commission, *Digital Assets as Personal Property* Supplemental report and draft Bill (Law Com No 416, 2024), 12–13 [2.25] (**UKLCSR**).
[37] The Bitcoin system has undergone such a copying when hard forks have occurred creating, at that point, Bitcoin Cash and Bitcoin Gold.
[38] [2025] VSCA 288 [83]-[84] and UKLCSR [2.30].
[39] [2025] VSCA 288 [93] and [95]-[114].
[40] Ibid [95]-[96], citing Ruscoe [105]-[108] and ByBit [31].

anonymity provided by the system is immaterial to delineating the item manifested by the ”unique” public key. That Bitcoin is identifiable by third parties; others can recognise there is an owner with power to exclude and the keys facilitate that. Bitcoin cannot be transferred involuntarily. On transfer it is exhausted. The new owner may deal with it. This was found to satisfy the exclusion requirement.[41]

42. The requirement that the thing is by its nature capable of assumption by third parties is identified by the VSCA as having two aspects and was satisfied. Third parties must respect such right and be subject to legal sanctions if they assert an unjustifiable claim to ownership.[42] Bitcoin has tradability, there is an active market, and it would be strange that something that is freely traded cannot be stolen. Bitcoin has value, “a sufficient aggregate of minds believe… it to have value”. The VSCA finds that Bitcoin “exists, definable, recognisable and stable on the public ledger until it is spent, at which point it moves to a different location on the ledger”. That 20% of Bitcoin has been lost is not significant, that does not detract from its permanence.[43]

43. On a Bitcoin transaction occurring the manifestation of the change on a public ledger is not ‘mere information’ “because the properties of the Bitcoin, which exist outside the minds of its users, are greater than the string of code”.[44] The volatility of the value of Bitcoin is of no significance as other forms of property are volatile. Even if it crashed, it still exists as a manifestation on the blockchain.[45]

44. The VSCA holds Bitcoin is “property” and intangible property for the purposes of s 72 of the Crimes Act.[46] It is “capable of being dishonestly appropriated.[47] The VSCA decides that there is no public policy reason for not treating Bitcoin and other digital assets as property. Not recognizing them as property would leave legitimate transactions vulnerable and would not ameliorate their misuse.[48]

45. Since Yeates, the Court of Appeal (**EWCA**) in *R v Lakeman*[49] (**Lakeman**) held that virtual “gold pieces” in a video game are property capable of being stolen. The EWCA relied on aspects of Yeates as support for departing from the orthodox rule that mere

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41 Ibid [97], [98] and [99]-[100].
42 Ibid [101]-[102].
43 Ibid [106]-[108]. The VSCA does not deal with how this loss occurred. The system needs some computer access & skills, & depends on access to an uncompromised wallet, including not forgetting any seed phrase.
44 Ibid [112].
45 Ibid [112]-[113].
46 Ibid [95], [123] and [132].
47 Ibid [123]-[124] and [132]-[133].
48 Ibid [131].
49 [2026] EWCA Crim 4.

information is not property, and for treating digital ledger entries as assets that exist independently of the code representing them. The Court recognised property in a purely digital allocation held under a limited, revocable licence that expressly conferred no ownership.[50] The EWCA adopted a similar approach to the VSCA in the consideration of the Ainsworth tests and held that 'in game' coins were more than "pure information" as they were rivalrous. However, the EWCA did not rely on either for its decision,[51] nor adopt the same approach as the VSCA in respect of the *Theft Act 1968* (UK). The EWCA adopted the view that property for the purposes of the legislation need not be the same as that applicable to civil law.[52] The EWCA also quoted from *United Aircraft Corporation v Federal Commissioner of Taxation,*[53] (**United Aircraft**) and found that 'in game' coins were not "pure knowledge", having stated earlier that knowledge is not something that can be stolen because a transfer does not deprive a person of that knowledge or the ability to use it.[54] The EWCA decision is also to be contrasted with the UKLCR doubting that 'in game' tokens would constitute property.[55]

46. Other intermediate appellate decisions from the UK, Singapore and the USA touch on the issue. In Tulip[56] the question was whether developers, who look after [some] of the Bitcoin distributed ledgers, arguably owe fiduciary or tortious duties to an owner of that cryptocurrency. The parties accepted that Bitcoin was property for the purposes of that matter.[57] Lewison LJ said: "The unusual factual feature … is that literally all there is, is software. A physical coin has properties which exist outside the minds of people who use it and in that sense is tangible. Bitcoin is similar. It also has properties which exist outside the minds of individuals, but those properties only exist inside computers as a consequence of the bitcoin software. There is nothing else."[58]

47. The Court of Appeal of Singapore in *Quoine Pte Ltd v B2C2 Ltd*[59] (**Quoine2**), noting it had been common cause below that the items were property, left it to another day to decide the point.[60] In *Van Loon v Department of the Treasury*[61] the US Court of Appeal,

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50 Ibid [84]-[87].
51 Ibid [68]-[69], [70]-[81] and [84].
52 Ibid [65]-[66].
53 (1943) 68 CLR 525.
54 [2026] EWCA Crim 4 [53] and [85].
55 Ibid [78]-[81].
56 Tulip [1].
57 Ibid [1] and [7].
58 Ibid [72].
59 [2020] SGCA(I) 02; [2020] 2 SLR 20, Quoine on appeal.
60 Quoine2 [6], [144]. Also see *CLM v CLN, CLO, CLP,CPZ,CQA,CQB,CQC* [2022] SGHC 46 [43].
61 No. 23-50669 (5th Cir. 2024).

5th Circuit, held that Tornado Cash was not property. The Court expressed the view that property requires ownership, ownership requires some dominion over the item and crypto was a form of smart contract.[62] It was immutable, and it was not capable of being owned.[63] The Ether in *Van Loon*, "Tornado Cash", did not depend on a 'proof of work' but on self-executing code.

48. Only a few of the first instance decisions have considered whether Bitcoin was simply information. In Blockchain Attiwill J (VSC) had to consider whether there was a contractual obligation between parties in respect of Bitcoin, finding that Bitcoin was to be distinguished from information because it includes a power to undertake transactions and to exclude third parties. While it was held to be intangible property, it could not be the subject of a bailment.

49. AA (EWHC) was an application for a proprietary interlocutory injunction in favour of an insurer who was seeking to recover Bitcoin by tracing.

50. Ruscoe (NZHC) was an application for directions, by liquidators of a failed cryptocurrency exchange. At issue was whether what was left should be pooled or whether those that had provided or bought identifiable crypto could recover that as their property. Gendall J held cryptocurrency was more than mere information; and also relied on New Zealand authorities that some digital assets constitute property for some purposes.[64] That line of authority is not supported elsewhere, including Australia.[65]

51. In D'Aloia (**D'Aloia**), Farnhill J held that cryptoassets are more than mere data - they are a set of transactional functionalities.[66] Farnhill J did not consider if confidential information has similar attributes, value, use, purpose and transactional functionality.

52. Some examples of decisions where crypto has been treated as property (or a resource for family law purposes) without a detailed consideration of its attributes include: family law;[67] proceeds of crime;[68] interlocutory or interim order matters;[69] and in liquidation

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62 No consensus as to what is a "smart contract": Larisa-Antonia Capisizu, 'Smart Contracts: Terminology and Legal Nature' 2019 *Conferinta Internationala de Drept, Studii Europene si Relatii Internationale* 651; Web3 [11]-[14]; UKLRSC [1.1] focused on one type of smart contract [1.2]. Thibault Schrepel "Collusion by Blockchain and Smart Contracts" (2019) 33 *Harvard Journal of Law & Technology* 118, 119-120; James Grimmelmann, "All Smart Contracts Are Ambiguous" (2019) 2 *Journal of Law & Innovation* 1.

63 Ibid 565.

64 Ibid [90]-[98].

65 See Katherine Hu "Property or Not? Digital Files Under the Criminal Law" (2017) 4 *PILJNZ* 106 (**Hu**).

66 [157]-[159]. A decision about Tether, also described as USDT, a stablecoin [2].

67 *Ressel v Morath* [2022] FedCFamC1F 863.

68 *DPP v Kustic* [2023] ACTSC 368, [25].

69 *Australian Securities and Investments Commission v NGS Crypto Pty Ltd* (No 3) [2024] FCA 822. [51].

matters.[70] There are some decisions where crypto has been found not to be property, such as foreign insurance and bankruptcy decision.[71]

53. **Part VI(3) – Information.** Neither information nor knowledge is property,[72] whether described as "pure information", "simple information" and "information more generally".[73] That is the case no matter how valuable, rich or important it may be, nor how functional it may be. Nor does it depend on why the question is raised: whether it be for the imposition of income tax, the imposition of stamp duty, access to medical records, knowing assistance and receipt, access to exam questions, numbers on a horse or board or description of a spectacle, or proceeds of crime.[74] (Obviously a statute may adopt a particular, broad definition.[75]) Either all knowledge is property or it must be possible to state criterion to distinguish between knowledge that is property, and that which is not property. Describing it as confidential information does not alter that, a view that has been repeatedly adopted in Australia and elsewhere.[76]

54. It has been variously that said Bitcoin is different because: it is not "mere" information[77] or "pure" information;[78] it is more than merely a collection of information and data (FC [51] CAB 66); the information on the blockchain does not remain immutable; it has a conceptual existence independent of the legal system and its users;[79] it cannot be double spent;[80] it is rivalrous;[81] it has greater functionality FC [51] CAB 66);[82] the whole purpose of crypto is to create something with tradeable value (FC [51] CAB 66, FC [77] CAB 70);[83] it is valuable, it is a species of wealth, it

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70 *Re Gatecoin Ltd (In Liquidation)* [2023] HKCFI 914.
71 *Rosenberg v. Homesite Insurance Agency, Inc*, 683 F. Supp. 3d 926 (D Minn, 2023); *In re Voyager Digital Holdings, Inc* No. 22-10943 (Ny, 2022).
72 Authorities on copyright, patents and trade marks have no bearing on the question, United Aircraft 533–6.
73 Yeates [80].
74 United Aircraft (income tax); *Victoria Park Racing and Recreation Grounds Co. Ltd v Taylor* (1937) 58 CLR 479 (**Victoria Park**) (numbers on a horse or board); *Oxford v Moss* (1979) 68 Cr App R 183 (**Oxford**) (exam paper); *Pancontinental Mining Limited v Commissioner of Stamps* [1989] 1 Qd R 310 (**Pancontinental**) (stamp duty); *Breen v Williams* (1996) 186 CLR 71, 77, 80, 88, 111, 128 (medical records); *Consul Development Pty Ltd v DPC Estates Pty Ltd* (1975) 132 CLR 373, 414 (property development knowledge); *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89 [117]-[118] (land development information) (**Farah**); *Denlay v Federal Commissioner of Taxation* (2011) 193 FCR 412 [68] (proceeds of crime); Your Response (database).
75 See footnote 101.
76 United Aircraft 533; Your Response [42]; *TS & B Retail Systems Pty Ltd v 3Fold Resources Pty Ltd (No 3)* (2007) 158 FCR 444 [74]; *R v Stewart* [1988] 1 SCR 963; Hu and Bridge.
77 Yeates [108] and [123].
78 Yeates [81].
79 Yeates [68] and [47].
80 Yeates [85].
81 Yeates [68], [76], [82], [91], [123] and [129]. Much software maintains a degree of rivalrous in its ledgers.
82 D'Aloia [2]; Yeates [74]-[75].
83 Yeates [74]-[76].

is similar to a PIN (FC [51] CAB 66), it is analogous to money;[84] it has economic and legal significance; like words of a contract that create a unique relationship, that can constitute property, and be transferred, crypto (Bitcoin) creates a similar relationship and can be transferred;[85] it is traded commercially (FC [51] CAB 66).

55. But whether the knowledge or information is described as "mere" information or "pure" information, the use of such adjectives do not aid in giving the information a particular identity. It remains information. Whether Bitcoin is described as the private key, the public key, a public address on the blockchain or the UTXO associated with that public key and public address, or some combination of them, each remains immutable, even when the Bitcoin is spent. What is lost by the use or exposure of the private key is the ability to exploit it, or some of it, for value, much like confidential information. Whether it relates to aircraft engine manufacturing, know-how, or mining information, that value is in the ability to keep it secret and let others in on the secret. In both cases, when exploited, it is exhausted, and rivalrous.

56. Confidential information usually has functionality and economic significance, an example is mining information, for which considerable sums are often paid, it remains information even though it is traded.[86] The confidential information is usually created to be exploited economically, whether by use or disclosure. Confidential information is protected by the law, but not because it is property.[87] Value is not an inherent characteristic of property, whatever an aggregate of minds may believe, an item may have no value, if an item of property, it is still property, though valueless.[88] That something is paid for does not make it property, advice is provided for money, as are various other services, such advice or services are not property. The right to view a commercial spectacle[89] and product goodwill,[90] no matter how valuable, are not property. That Bitcoin is analogous to money does not make it property, money has an unusual nature, it is not only an item (whether a coin or note), it is something readily and freely accepted in the community in satisfaction of an obligation,[91] including by government in payment of tax. A PIN is information used to access an account,

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84 Yeates [76] and [85].
85 Yeates [75] and [77].
86 Pancontinental.
87 Farah; MGL [42.135].
88 Yeates [104]; land may be the subject of toxic contamination and have negative value, it is still property.
89 Victoria Park 496, 509, 523; K Gray "Property in Thin Air" (1991) 50 *Cambridge Law Journal* 252 (**Gray**).
90 *Hospital Products Ltd v United States Surgical Corporation* (1984) 156 CLR 41, 145.; Gray.
91 *Moss v Hancock* [1899] 2 QB 111, 115-116; Miller v Race (1758) 1 Burr 452, 457-58, 97 ER 398, 401; *Travelex Ltd v Federal Commissioner of Taxation* (2010) 241 CLR 510 (**Travelex**); see below.

pursuant to a contract. It is not property, but simply remains information.

57. The words of a contract that satisfy the requirements of the law will create a unique relationship that may be enforced by the law. The contract exists because of a legal framework.[92] Property is a concept of the law and enforceable by the law.[93] There is no such legal framework in the case of Bitcoin. It was intended to be free of any state or legal system. It does not rely on such systems or intermediaries,[94] though it is not wholly self-executing, unlike some other smart systems. That Bitcoin uses a known cryptographic system to "prevent double spending"[95] does not place it in a legal framework known to the law. There is no law that governs the enforcement against the blockchain.[96] Unlike a bank account or indeed a stablecoin, there is no contract, person, resource or fund that will answer to a claim. As Tulip highlights, the action against some miners was based on a fiduciary obligation rather than a property right.[97]

58. In Yeates, the VSCA states, as a basis for distinguishing the public key from "mere" information, that the properties of Bitcoin exist outside the mind of its users, and it is greater than the string of code. As also said in Tulip, all that exists is software, nothing else.[98] The VSCA also states that treating Bitcoin as mere data ignores its larger functionality, in the same manner as treating a physical coin as a metal disc ignores its economic and legal significance.[99] Yet the law has done that - it has been the coin that is protected and which is the subject of restitution, in limited circumstances, because it could be physically possessed rather than for its "larger functionality".[100] None of that is to imply that various forms of knowledge, information, processes, design, marks, computer code and plant varieties may not be afforded the status of property, however that has occurred through legislation.[101]

59. **Property.** Bitcoin is not property. It is not a concentration of power over things or a resource. It is the output of software. Nor is the blockchain a relationship between

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92 N C Seddon and M P Ellinghaus *Cheshire and Fifoot's Law of Contract* (9th Australian Edition 2008) [1.16].
93 *National Trustees Executors and Agency Co Ltd v FCT* (1954) 91 CLR 540 (**National Trustees**), 584.
94 Satoshi Nakamoto, 'Bitcoin: A Peer-to-Peer Electronic Cash System' (31 October 2008); Yeates [24].
95 Yeates [24].
96 There may be contractual or other legal obligations arising between persons engaged in trading, holding or utilising Bitcoin, as occurred in Re Blockchain or using crypto exchanges.
97 [2023] EWCA Civ 83 [1] (**Tulip**); CAR [50]. Decisions dealing with stablecoins, such as *D'Aloia v Persons Unknown* [2024] EWHC 2342 (Ch) are distinguishable from Bitcoin decisions, because of their differences.
98 Yeates [73], [91] and [112] and Tulip [16].
99 Yeates [75].
100 *Moss v Hancock* [1899] 2 QB 111.
101 *Copyright Act* 1968 (Cth) s 196(1), *Trade Marks Act 1995* (Cth) s 21(1); *Patents Act 1990* (Cth) s 13(2); *Plant Breeder's Rights Act 1994* (Cth) s 20; Designs Act 2003 (Cth) s 10(2).

persons in respect of a thing, assuming there is a thing.[102] There is no thing. Bitcoin is simply information in a database - one that may have unique or unusual characteristics.

60. Describing Bitcoin as an "electronic coin" does not address the issue. It is not a stamped piece of metal, something that can be possessed. Bitcoin it is not money.[103] Bitcoin is not analogous to money, notwithstanding some persons may be prepared to accept it in satisfaction of an obligation. Money is something "that which passes freely from hand to hand throughout the community in final discharge of debts and full payment for commodities".[104] Bitcoin and its keys are not documentary intangibles - there is no bundle of rights, there are no choses, there is no paper that supports such rights and the principles that have been developed in respect of such documents.[105]

61. For the Ainsworth tests to apply,[106] there must be more than "mere information".[107] The Ainsworth tests are: the item is definable, identifiable by third parties, capable of assumption by third parties, and has a degree of permanence or stability. The Magistrate considered the Ainsworth tests and considered they were satisfied. The members of the Full Court did not consider nor apply the Ainsworth tests, though Shanahan CJ (FC [25] CAB 60) and Estcourt J described the Magistrate's consideration of that decision and its tests (FC [63] CAB 67).

62. Bitcoin is not definable, other than as simply lines in a database. It is not definable nor identifiable simply by reason of the public key, a public address, pieces of cryptography or data. A unique alphanumeric code on the blockchain does not make it a thing. Much like any ledger item, it may be a unique alphanumeric string, mere information. Once any such line item is published on the internet, it may subsist in that form somewhere on one or more computers, possibly forever. The fact that such line item may be added to, manipulated or changed using cryptograph (the use of keys) does not make it relevantly identifiable to a third party. There is no more property in a key than there is in a PIN or password, a sequence of characters. If it is definable, then it is only definable to the extent that it can be represented by such line item(s). It has no other existence.

63. Yeates describes the Ainsworth identifiable characteristic as requiring a power to

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[102] *Yanner* [17]-[20]; *Telstra Corporation Limited v Commonwealth* (2008) 234 CLR 210 (**Telstra**) [44]; *Hocking v Director-General of the National Archives* (2020) 271 CLR 1 [89]-[90].
[103] Moss 115-116; *Travelex*.
[104] Moss 116. There is no evidence that it passes freely from hand to hand.
[105] Telstra 230-1; M Bridge *et al The Law of Personal Property* (3ed 2022) (**Bridge**) [1-026] & Ch 5; National Trustees 584; Satoshi Nakamoto, 'Bitcoin: A Peer-to-Peer Electronic Cash System' (31 October 2008).
[106] Gray (293), highlights the 'horrible circularity of such hallmarks of "property"'; also see K Gray and S F Gray *Elements of Land Law* (5th ed 2009) ch 1.5, in particular 1.5.29.
[107] Yeates [93].

exclude others from the asset.[108] This test is described in Re Blockchain[109] adopting that approach from Ruscoe.[110] Identifiability and excludability are two very different concepts, Ruscoe considers excludability as being part of this test, without authority.[111]

64. The third Ainsworth test is that the item must be capable in its nature of assumption by third parties. Yeates describes Bitcoin as satisfying that characteristic, as it is tradable and there is an active market. The ability to manipulate a line of information using cryptograph does not constitute assumption. The Bitcoin is not assigned when a UTXO is utilised. What occurs is at least one new entry on the blockchain, and if only partly utilised then the remaining portion may stay at the same address or go to a new address. There is no assignment or transfer. There is at least one new entry, a different item.[112]

65. Stability is the fourth Ainsworth requirement. Bitcoin is not stable. It is highly volatile. Its value has undergone large swings. No resource underpins it. It is based 'on a "greater fool" basis' - collective irrational behaviour. That is to say, it is based on there currently being somebody in the collective group, more foolish, to buy the Bitcoin at a higher price.[113] It is not a piece of metal or paper. That the data, information or record in the blockchain remains on the blockchain is not to the point. The entries demonstrate transactions, not its stability.[114] That 20% of Bitcoin has so far been lost, only further highlights its instability.[115]

66. In the Full Court, Shanahan CJ also stated that the courts have focused on a number of integers: whether it is possible to exclude others from the right,[116] whether in commerce it is treated as valuable,[117] and enforceability against third parties generally[118] (FC [25] CAB 60). These are not exclusive attributes, as already submitted. Those attributes can also apply to confidential information.[119] Shanahan CJ later discusses possession, quoting from F Pollock and R Wight,[120] noting a difference between de facto possession and possession at law (FC [53]-[54] CAB66), paraphrased as "effective occupation or

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[108] Yeates [98]-[99].
[109] Blockchain [385].
[110] Yeates [112]-[113]
[111] Identifiable means able to be identified, discernible or recognisable. Whilst the ability to exclude is the ability to shut or keep out Macquarie Dictionary (Online). Ruscoe [109]-[113].
[112] Yeates [102]; Tulip [25]; yet when a bank account is involved, this is regarded as a chose in action and not the same chose in action, it is not assigned *R v Preddy* [1966] AC 815, 834 (**Preddy**).
[113] Robert Stevens, 'Should Crypto Be Property?' <https://ssrn.com/abstract=5536058>.
[114] Yeates [107]. The blockchain can be changed by consensus and entries could be overridden.
[115] Yeates [108]. A right ceasing on the loss of information does not sit easily with a concept of property.
[116] *Milirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141, 272.
[117] *Halywood Corporation Ltd v Chief Commissioner of Stamp Duties* (1992) 33 NSWLR 395, 403.
[118] *Wily v St Georges Partnership Banking Ltd* (1999) 84 FCR 423, 426.
[119] See paragraph 56 above.
[120] F Pollock and R Wright *An Essay on Possession in the Common Law* (1888) 12-13 and 16.

control" or "control is coupled with a legal claim". In the case of Bitcoin - indeed much crypto - there is no occupation, as there is nothing to occupy or possess.[121] As is submitted, even control or a power to control, is not necessarily indicative of property. Further, there is simply an entry in the ledger. The holder of the private key does not control the ledger, nor indeed the entry in the ledger, nor the proof of work. The distributed ledger may collapse, or the entries may be rolled back by those controlling the ledger. A private key holder cannot control a rollback, nor can the courts of a country compel a rollback. Even a purported transaction using the private key is not given immediate effect. It is in the mempool until it is included in a block following a proof of work.[122]

67. **Bitcoin – consequences if property.** If Bitcoin is property, then, because it cannot be possessed, it must be intangible property. The line(s) of data are not the subject of copyright. Neither are the line(s) of data, nor are the keys computer programs, a set of statements used in a computer to bring about a certain result. It is the bitcoin program that effects the result. The private key simply allows access, like a PIN. Nor is it a documentary intangible as described.

68. The possibility that there is a third category of "personal property" at common law, apart from a "chose in action" or "chose in possession", remains controversial in England in view of the decision in *Colonial Bank v Whinney*[123] (**Whinney**). It is now addressed by legislation in England and Wales.[124] Moore-Bick LJ in Your Response[125] said "that decision makes it very difficult to accept that the common law recognises the existence of intangible property other than choses in action …, the decision in OBG… prevents us from holding that property of that kind is susceptible of possession so that wrongful interference can constitute the tort of conversion." In AA, Bryan J in effect treats Bitcoin as a third category,[126] relying in part on Your Response going too far and that certain statutory licenses may be treated as property.[127]

69. Both Yeates and Lakeman now give digital tokens (whether Bitcoin or 'in game' tokens) greater status than money in a bank. In *R v Preddy*[128] (**Preddy**) the House of Lords held

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[121] Only [true] possession is exclusive, F C Von Savigny translator E Perry *Von Savigny's Treatise on Possession* (English edition, 6th ed 1848) Section XI 113.
[122] Yeates [49]. Yeates did not deal with the possibility of delay in processing or a failure to process.
[123] (1885) 30 Ch D 261; (1886) 11 App Cas 426.
[124] *Property (Digital Assets etc) Act 2025* (UK).
[125] [2015] QB 41 [26] with whom Davis and Floyd LJJ agreed. In National Trustees 584, see further below.
[126] [2019] EWHC 3556 (Comm) [59].
[127] Ibid [58]-[59].
[128] *R v Preddy* [1996] AC 815,834.

that money represented by credit entries in a bank account could not be stolen merely by electronic debits and credits. No property belonging to another was obtained; the victim's chose in action was extinguished and a new chose in action was created in favour of the defendant. Earlier in *R v Croton,*[129] in this Court, the plurality affirmed that bank account balances are not money in a proprietary sense capable of theft.

70. **Control, Powers & Property.** Even a power to do something or the ability to control something has not by itself constituted property.[130] More is required. Even the holder of a general power is not always regarded as an owner, a proprietor, in all situations.[131]

71. **Burgeoning Legislative Treatment.** Shanahan CJ held that confirmation or recognition of crypto as property "would be consistent with the burgeoning legislative treatments of such assets as property" (FC [52] CAB 68). Shanahan CJ provides no examples of such burgeoning legislation in Australia. The UKLCSR did not go so far as recommending legislatively recognising crypto as property, it simply recommended that a thing (including a digital thing) is not prevented from being an object of personal property.[132]

72. **Part IV(4) – Bitcoin – No Detinue or Conversion.** Even if Bitcoin is property, which it is contended it is not, it can only be intangible property. Detinue and Conversion are torts about tangible items of property and involves strict liability. "The essence of conversion is a dealing with a chattel in a manner repugnant to the immediate right of possession of the person who has the property or special property in the chattel".[133] Conversion is a tort of strict liability and should not be extended to intangibles.[134]

73. There can be no conversion of a chose in action, as there is no possession.[135] The plurality in *OBG Ltd v Allan*[136] (**OBG**) confirmed that conversion involves tangible property and it would be too drastic to apply it to choses in action,[137] "under the guise of a development of the common law".[138] In National Trustees Kitto J states[139] that

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[129] *Croton v R* (1967) 117 CLR 326.
[130] *Re Armstrong* (1886) 17 QBD 521, 531; *Jones v Clifton* 101 US 225 (1879).
[131] *Tasarruf Mevduati Sigorta Fonu v Merrill Lynch Bank and Trust Company (Cayman) Limited* [2012] 1 WLR 1721 [31]-[46].
[132] Reversing any lingering doubts about the application of *Colonial Bank v Whinney* (1885) 30 Ch D 261, 285; UKLCSR; *Property (Digital assets etc) Act 2025* (UK).
[133] *Penfold Wines Pty Ltd v Elliott* (1946) 74 CLR 204, 229.
[134] A Tettenborn ed *Clerk & Lindsell on Torts* (24th ed) [16-26].
[135] *Doodeward v Spence* (1908) 6 CLR 406; *Ferguson v Eakin Cole* [1997] NSWCA 106.
[136] [2008] 1 AC 1; Your Response [26].
[137] Ibid headnote (5) and [271], [95]-[107], [271] and [319]. Applied in *Ping Fai* [46na]-[79] in respect of Bitcoin. Also see to the cases to the contrary in North America described at [62]-[64].
[138] S Green & J Randall *The Tort of Conversion* (2009) Chs 2-3 and 5; two papers by F B Ames, 'History of Trover' (1897-1898) 11(5) *Harvard Law Review* 277 and 11(6) *Harvard Law Review* 374.
[139] National Trustees 584.

choses in action now comprises a heterogeneous group of rights, but even that does not extend the availability of conversion or detinue.

74. Estcourt J declines to follow OBG (FC [96] CAB 79). Shanahan CJ appears to imply that detinue and conversion are available in respect of crypto (FC [53]-[55] CAB 66), however the Chiel Justice and Jago J, as already stated, do not decide the matter on that basis. We submit the Full Court does not find a third category of property, nor find that conversion is available. But if the Full Court did go that far, in view of Whinney, National Trustees, OBG and Your Response, the Full Court went too far, if implying that conversion can apply to intangible items including Bitcoin.

75. The chattel torts are not subject to a defence of purchaser for value without notice. It is a large thing to extend the old chattel torts to intangibles.[140]

76. The Magistrate erred in finding the torts were established. The primary judge erred in dismissing the appeal, the Full Court erred in dismissing the appeal without considering whether Bitcoin is property and could properly be the subject of detinue or conversion.

77. **Part IV(5) – Ground 2 – Availability of Appeal to the Full Court.** The appellant submits that the appellant was entitled to appeal to the Full Court on the ground set out in the notice of appeal and that Shanahan CJ and Jago J were wrong to deny the appellant a decision on the substantive facts and law in respect of Bitcoin in the Full Court. Further, their Honours should have found that Bitcoin was not property. Their Honours should have found it could not be the subject of detinue or conversion.

78. Brett J expressly found that "[t]he nature of Bitcoin and the defendant's control over it makes it clear in my view that he was in possession of the relevant property at all material times" and that detinue and conversion were available in the circumstances (SC [32] CAB45). The appellant was entitled to test that finding on the appeal.

79. Further, the approach of Escourt J, in this respect, should be preferred, namely that (FC [69]-[73] CAB 69):

    79.1 the ground of appeal before the intermediate court could be taken as wide enough to embrace the appellant's legal argument before the Full Court;

    79.2 there was no significant injustice and prejudice in allowing that legal argument to be raised in the Full Court. It was raised and decided upon by the Magistrate

[140] Clerk & Lindsell on Torts (24ed), [16.36]; S Douglas "Liability for wrongful interference with chattels" (Hart, Oxford, 2011), pp 16-17. Cane, "Tort law and economic interests" (2ed) (Clarendon, Oxford, 1996), pp 30-31. M Bridge, "Personal property law", (3ed) pp 55-56. As to the history of treatment and terminology of things, S Hackett, "The ownership of goods and chattels" (Hart, Oxford, 2020), pp 11-14.

and in effect Brett J also decided the issue;

79.3 no further evidence or cross examination could have affected the question;

79.4 the question as to the status of Bitcoin was a matter of law, and any injustice in allowing a hearing on that aspect could be remedied by costs; and

79.5 the respondent's contention about cross appealing a finding of the Magistrate, and not doing so, was itself a forensic decision of the respondent.

80. The appellant further submits that the word *trial* in the *Supreme Court Civil Procedure Act 1932* (Tas) is defined in s 3(1) as including a hearing and is therefore not limited to a first instance hearing. The word *trial* in s 47(3) extends to any hearing by a court where matters of fact and law are determined finally by the court. The Full Court had the power to hear and determine the single ground of appeal and should have done so.

81. Further, the matter had been raised at the trial before the Magistrate, evidence was taken, and there were findings in respect of the issue. The appeal before the intermediate court was wide enough to embrace the argument and the decision of the intermediate court was "the nature of Bitcoin" and the defendant's control, makes it clear that the defendant "was in possession of the relevant property". That finding was the subject of the appeal, it was a matter of law. The plurality was wrong not to decide the issue (SC [32] CAB 45, [49] CAB 65 and [99] CAB 80).[141]

Part VII: Orders Sought

82. The orders sought are set out in the Notice of Appeal.

Part VIII: Time Required for Presentation of Argument

83. The appellant estimates that 3 hours is likely to be required for the presentation of the appellant's oral argument and up to ½ hour in in reply.

Dated: 25 March 2026

.....D. W. Marks.....

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[141] *Dovuro Pty Ltd v Wilkins* (2003) 215 CLR 317; *Queensland v J L Holdings* (1997) 189 CLR 146, 154.

ANNEXURE TO APPELLANT'S SUBMISSIONS

No	Description	Version	Provision(s)	Reason for providing this version	Applicable date or dates (to what event(s), if any, does this version apply)
Tasmanian Legislation					
1	*Supreme Court Civil Procedure Act 1932* (Tas)	As at 1 July 2025	Ss 3(1) and 47	The provision that sets out the powers of the Full Court on the hearing of an appeal as at that date	1 July 2025