



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 REPLY**Part I: Certification**

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

Part II: Reply**2. IV: Contested Material Facts:**

3. **V(1): The nature of Bitcoin.** There was substantial evidence before the MC about the nature of Bitcoin. There was limited evidence before the MC that “Bitcoin can be...used as payment for goods or services” as contended by the Respondent (Respondent’s Submission (RS) [9]).
4. Bitcoin is finite and is limited to just below 21 million coins by reason of the existing algorithm.¹ Like all aspects of the Bitcoin algorithm it may be modified by consensus and that could theoretically increase the Bitcoin limit. That would involve a hard fork,²
5. Thus, consensus and hard fork aside, contrary to RS [10], the creation of Bitcoin and the issue of shares is dissimilar. A company may ordinarily raise more capital by the issue of more shares. And, by section 1070A of the *Corporations Act 2001* (Cth) a share is personal property. In this context, creation of an additional Bitcoin by mining is dissimilar to raising capital by the issue of shares. And nothing declares cryptocurrency to be property. Bitcoin is designed to be free of the involvement of intermediaries or trusted third parties including mints (the state).³ Bitcoin is unlike a share, contrary to RS [11].

¹ Andreas Antonopoulos and David Harding *Mastering Bitcoin: Programming the Open Blockchain* (3ed) (Kindle Edition) (Antonopoulos) 31, 457-458.

² Ibid ch 12. Contrary to the Respondent’s Submission (RS) [10].

³ Satoshi Nakamoto, ‘Bitcoin: A Peer-to-Peer Electronic Cash System’ (31 October 2008).

6. As the Respondent states, the public key is “information” (RS [12]), but so is the private key. Further, the private key does not permit a transfer of UTXO but the creation of a new UTXO at a new address, in whole or part. There is no transfer,⁴ contrary to RS [13].
7. The consensus that underpins Bitcoin is indeed informal as highlighted by the decision in *Tulip*⁵ where the remedy was not based on property but on an alleged fiduciary duty. However, the same consensus may allow a soft fork, hard fork and even possibly a reorganisation (rollback),⁶ destroying the alleged certainty contended for by RS [14].
8. Real world commercial power, and value, does not result legally in an item being property. A spectacle may have value, as may confidential information, and insider information. That does not mean any is property, contrary to RS [15].⁷
9. **V(2): The concept of property.** The Respondent incorrectly submits that the AS wrongly focuses on Bitcoin, as a thing rather than the relationship with it, because it is information (RS [16]). This misses the point. If Bitcoin is only “information”, however that word be qualified, there is no thing nor resource. It is just the output of software (AS [59]). There is no resource, nor something to be the subject of a relationship.
10. If Bitcoin be a thing, property is nevertheless a concept of, and enforceable by, the law. There is no applicable legal framework for Bitcoin (AS [57]). As already described Bitcoin is intended to be free of the involvement of intermediaries or trusted third parties including mints (government).⁸
11. RS focuses on the concept of excludability and matters of control (RS [23]). Gray states there are three grounds for a resource to be excludable: physical, legal and moral. There can be no property in a resource which it is “physically unrealistic to control”. There is no property in a resource where there is no legal excludability. Bitcoin eschews reliance on any legal system or third party. Moral excludability extends to nobody owning words or numbers - they cannot be property, “they are far too precious to be removed from the common”. The private key, the public key, the public address and the blockchain are merely a series of characters and numbers (words). Bitcoin does not satisfy any of Gray’s three criteria for excludability, as relied on in the RS.⁹

⁴ *Coles Myer v Commissioner of State Revenue (Vic)* [1998] VSC 288, [1998] 4 VR 728.

⁵ *Tulip Trading v Van der Laan* [2023] 4 WLR 16.

⁶ Antonopoulos 100, 375, 379, 427 and 523.

⁷ AS [53], [56]; *Victoria Park Racing and Recreation Grounds Co Ltd v Taylor* (1937) 58 CLR 479 (**Victoria Park**).

⁸ Satoshi Nakamoto, ‘Bitcoin: A Peer-to-Peer Electronic Cash System’ (31 October 2008); .

⁹ Gray 270, 278 and 283.

12. The RS also contends that another approach to identifying a proprietary relationship is that an item has commercial value. As Gray highlights in *Victoria Park McTiernan J* ‘stressed that the plaintiff had no legal right to the continued operation of its enterprise in circumstances conducive to profit: the plaintiff “took the risk of a change in those circumstances”’.¹⁰ The mere ability to exploit does not create proprietary rights, if there is no legal right. Bitcoin does not depend on legal rights. In these circumstances the argument becomes wholly circuitous, as does the argument about value and tradability. As already described, information may be valuable.¹¹
13. **V(3): Bitcoin capable of being property.** Recorded balances with a bank constitute the extent of a chose in action, a recognised legal right, and may constitute an account stated. It bears minimal if any comparison with the Bitcoin ledger (contrary to RS [20]).
14. There are no parallels with a statutory system creating rights (whether they be water or access to any other resource) where they declare the right to be property. The very fact that the statute must declare the right to be property highlights the issue (RS [10]).
15. Failing to afford those that use and trade in Bitcoin a legal remedy does not “place the common law drastically out of step with the commercial world.” Those persons have chosen to use a system that was designed and intended and indeed eschews reliance on anything other than a computer system, that is self executing, and does rely on trust (RS [31]). Those persons have made a choice in doing so and have eschewed such protection.
16. **V(4): ‘Bitcoin is not mere information’.** That legislatures have regulated those engaged in trading cryptocurrency does not alter its character. Further, whether crypto satisfies a particular statutory definition is a matter of parliamentary intent and statutory interpretation (RS 33-36). The character of Bitcoin is a matter for the legislature.
17. **V(5): Categorising property in the electronic era.** The common characterisation is that personal property consists of things in possession or things (choses) in action.¹² However, the first step is to determine whether the item is property. If the item is not property, but information, then one does not need to embark on the further enquiry (RS [37]-[43]). Once, the item answers the description of property, then it is necessary to fit

¹⁰ Gray 267. Also see AS [88].

¹¹ As Gray (293), highlights in respect of the tests from *National Provincial Bank Ltd v Ainsworth* [1965] AC 1175, that there is a ‘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. Much the same applies to many of the other criteria often used to identify property, including tradability and value.

¹² *Colonial Bank v Whinney* (1885) 30 Ch D 261 (**Whinney**); 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).

the item into one of the categorisations of things in possession or things in action.¹³ Bitcoin is neither, even if characterised as property. So, it cannot be personal property on that basis (RS [37]-[43]). However, whether things in action encompass more than simple choses in action or there is a third class remains controversial (AS [68]),¹⁴ (contrary to RS [37]-[43]). This has been remedied in England and Wales by legislation.¹⁵ That also suggests legislation is necessary to solve this controversy.

18. **V(6)-V(8): ‘The torts of detinue and conversion, Bitcoin can be possessed and the torts of conversion and detinue are made out’.** RS seek first to equate things with goods and chattels (RS [44]-[50]), then possession with control (RS [51]-[64]) and then to assert that detinue or conversion should therefore apply to Bitcoin (RS [65]). Alternatively, it is asserted that the paper wallet is to be equated with a documentary intangible (RS [66]). RS further seek to equate a power to control with possession, through the concept of notional possession. Yet a mere power to control an item is insufficient. A power is not property.¹⁶
19. As Lord Hoffmann said in *OBG Ltd v Allan*¹⁷ (**OBG**) “it would be an extraordinary step suddenly to extend the old tort of conversion to impose strict liability for pure economic loss ... Furthermore, the effects of such a change in the law would of course not stop there...[and he warned, citing other authority] against making fundamental changes to the law of tort in order to provide remedies which, if they are to exist at all, are properly the function of other parts of the law.”
20. Further as Lord Hoffman stated,¹⁸ in respect of the extension of conversion to negotiable instruments (documentary intangibles), it is “in my opinion an insecure base on which to erect a comprehensive system of strict liability for interference with choses in action.”
21. Lately, in *Ping Fai Yuen v Fun Yung Li*¹⁹ (EWHC) (**Ping**) Cotter J considered applications *inter alia* to strike out a claim in conversion in respect of Bitcoin and for substituted service. The Bitcoin was held through a Trezor cold wallet. It was alleged that the plaintiff’s estranged wife used a seed phrase to recreate the wallet on a separate device.²⁰ Cotter J considered *OBG*, *Whinney*, *UKLCR*, *Your Response Ltd v Datateam*

¹³ Ibid.

¹⁴ *National Trustees Executors and Agency Company Limited v Federal Commissioner of Taxation* [1954] HCA 71, (1954) 91 CLR 540, 584.

¹⁵ *Property (Digital Assets etc) Act 2025* (UK).

¹⁶ AS [70], *Perpetual Trustee Company Limited v Federal Commissioner of Taxation* (1926) ALR 317, 318.

¹⁷ [2008] 1 AC 1, 43 [99], Lord Walker and Lord Brown agreeing with him, .

¹⁸ Ibid 45, [106].

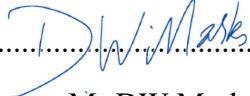
¹⁹ [2026] EWHC 532 (KB) (10 March 2026).

²⁰ Ibid [2]-[5].

Business Media Ltd,²¹ *AA v Persons Unknown* [2019 EWHC 3556, *Jones v Persons Unknown*²² and some United States and Canadian decisions.²³ In view of OBG, the tort of conversion was not available in respect of Bitcoin. That aspect was struck out.²⁴

22. The Respondent would extend detinue and conversion, with their strict liability, not simply to choses in action but to a concept (crypto and Bitcoin) that was intended to work without resort to the law, that is neither a thing in possession nor a thing in action and has no greater representation than line items in a ledger and represented by nothing more than a string of characters and numerals, as described. It should be rejected.
23. **V(9) (Incorrectly described as V(8) RS[67]): The application to revive an abandoned argument before the Full Court.** As stated at AS [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). On that basis there was a clear determination of the issue on the intermediate appeal and therefore the appellant was entitled to test that finding on the appeal to the Full Court. The finding was a matter of law. Accordingly, at that point there was no abandoned point. The plurality in the Full Court erred in refusing to determine the substantive issue.
24. **V(10) Intervener.** The Federal Commissioner of Taxation (FCT) should be denied leave to intervene in this matter. The FCT’s interests will not be directly, indirectly or contingently affected by a decision in this matter nor will the FCT be bound by the decision. The FCT’s interest is no different from any member of the community who has an interest in Bitcoin. There is no risk that the parties in this matter may not present fully the submissions on the relevant issue.²⁵ The CGT and trading stock provisions mentioned are not expressly limited to “property”. The DPP is addressing the next day, in *Yeates*, and the Commonwealth need not be heard twice.²⁶

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²¹ [2015] 1 QB 41

²² [2022] EWHC 2443.

²³ [2026] EWHC 532 [62]-[64].

²⁴ Ibid [77]-[79].

²⁵ *Roadshow Films Pty Ltd v iiNet Ltd* (2011) 248 CLR 37 at 38-39 [2]-[3].

²⁶ Eg *R v Elliott* (1996) 185 CLR 250, per Brennan CJ in argument, 253.8-254.1.