HIGH COURT OF AUSTRALIA

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IN THE HIGH COURT OF AUSTRALIA **No M36 of 2026**

MELBOURNE REGISTRY

BETWEEN

Connor Yeates (A Pseudonym)

Appellant

and

The King

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. Whether Bitcoin is property, is intangible property, and falls within the definition of property in section 71 of the *Crimes Act 1958 (Vic.)* (**Crimes Act**).[1]

3. Whether a charge of theft proffered in relation to the dishonest appropriation of Bitcoin pursuant to section 72 of the Crimes Act is sound in law.[2]

Part III: Section 78B Notices

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

Part IV: Reasons for Judgment Below

5. The reasons of the County Court of Victoria are *Director of Public Prosecutions v Connor Yeates (A Pseudonym)*[3] and are unreported (**CC**) (CAB 4-20).[4]

6. The reasons of the Court of Appeal Criminal Division of the Supreme Court of Victoria (Emerton P, Taylor and Kidd JJA) are *Connor Yeates (A Pseudonym) v The King* [2025] VSCA 288 (**VSCA**) (CAB 52-80).

Part V: Relevant Facts – Summary of Alleged Offending

7. On 25 January 2019 a search warrant was executed as part of a drug operation. During the search a Victoria Police officer located and seized a Trezor crypto hardware wallet

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1 Ground 1.
2 Ground 2.
3 CC's reasons did not use the pseudonym We have applied it so that these submissions may be published.
4 We have omitted the date and court reference number so these submissions may be published.

connected by USB to a computer tower. Officers present were instructed to search for a seed phrase, being a list of 12 to 24 words. Two versions of an identical list of 24 words were located: one stamped into a metal tag and the other in a paper leaflet labelled 'Trezor' (VSCA [7] CAB 031).

8. It is alleged that Federal Agent Whyte sent images of the metal tag and leaflet to the appellant asking if he had ever seen such a list and whether it was a 'crypto currency thing'. It is further alleged that the appellant said that each image depicted 'a private key' (VSCA [8] CAB 031).

9. The prosecution alleges that on 29 January 2019 the appellant used the seed phrase to rebuild the Trezor wallet, which at that time facilitated access to 81.61677759 Bitcoin. It is alleged that the appellant transferred that Bitcoin to a second wallet under his control. It is alleged that the Bitcoin was then valued at about AUD 492,607. This is the alleged dishonest appropriation of property belonging to another that is said to found the theft charge (VSCA [9] CAB 031).

10. The prosecution evidence is said to demonstrate that via a series of complicated cryptocurrency transfers the Bitcoin was ultimately exchanged for AUD and, in a series of deposits between 30 January 2019 and 30 August 2022, was received by the appellant in his bank account. It is alleged that in that period deposits totalling $879,942.87 were made (VSCA [10] CAB 032).

Part VI: Argument

11. **Ground 1 – Introduction:** Part VI(1) outlines the approach of the CC and VSCA. Part IV(2) describes court decisions dealing with the status of Bitcoin. Part VI(3) shows why Bitcoin is not property at common law.[5] Part VI(4) submits that Bitcoin is not property for the purposes of section 71 of the Crimes Act. Part VI(5) submits that a charge of theft proffered in relation to the dishonest appropriation of Bitcoin, pursuant to section 72 of the Crimes Act, is not sound in law.[6]

12. **Part VI(1) – Introduction – Bitcoin.** Bitcoin involves no physical 'coin', nor individual digital 'coins'. The 'coins' are implied in transactions that 'transfer' value from spender to receiver.[7] Bitcoin is both the name of an item of information described as

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5 Ground 1.
6 Ground 2.
7 Andreas Antonopoulos and David Harding *Mastering Bitcoin: Programming the Open Blockchain* (3ed) page 1.8.

"cryptocurrency" (**crypto**) and the name of a protocol.[8] Bitcoin is nothing more than a string of code in a distributed computer database whether described as a ledger or block.[9] It relies on a computer program described as Bitcoin Core.[10]

13. 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.[11]

14. 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 is divided into satoshi.[12]

15. 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 the hash of the public key may be used instead of the public key.[13]

16. The amount stored on the blockchain, or 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.[14]

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8 Andreas Antonopoulos and David Harding *Mastering Bitcoin: Programming the Open Blockchain* (3ed) (Kindle Edition) (**Antonopoulos**) 32.

9 Simon Gleeson *The Legal Concept of Money* (OUP 2018) (Gleeson) [1.16].

10 Antonopoulos Ch 3.

11 See *Tulip Trading v Van der Laan* [2023] 4 WLR 16 (**Tulip**) [17]-[40]; VSCA [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 from D Achtypis, County Court Transcript T15-T95 Further Materials (**FM**) 0023-0103 and Exhibit A FM 0244-0266, and Annexure D FM 0281-0345.

12 Ibid.

13 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.

14 See footnote 11.

17. 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.[15]

18. 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.[16] The decision of
10 *D'Aloia v Persons Unknown*[17] (**D'Aloia**) involved such a crypto (USDT, Tether backed by USD),[18] as did the recent Full Federal Court decision of *ASIC v Wallet Ventures Pty Ltd,*[19] (**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.

19. **Reasoning of the Courts below:** The CC held that as at January 2019 the Bitcoin the subject of Charge 2 on the indictment was property. The CC did so adopting the reasoning of Attiwill J in Blockchain. That was on the basis that the Bitcoin was identifiable or definable, it is identifiable by third parties, there was a sufficient degree of permanence and stability and its tradability distinguished it from mere information (CC [59] CAB 023).

20 20. The CC further emphasised that the allegation in practical terms alleges that the appellant "dishonestly appropriated a public key, recognised by the Bitcoin software and its many users as an unspent transaction output, with its matched private key. In doing so, it will be alleged that he acquired an item of commercial value that can be used as a medium of exchange, that was recognisable by third parties as such, and which could be readily exchanged for money." (CC [60] CAB 023-024).

21. In reaching that conclusion, the CC held the definition of 'Property' for the purposes of s 71(1) of the Crimes Act was non-exhaustive, including property with no physical existence, and unlike prior to its adoption in the *Theft Act 1968* (UK) "things such as debt, copyright and even a quota became capable of being stolen." ([37] CAB 018).

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15 Yeates [28] and [83]; *Ping Fai Yuen v Fun Yung Li* [2026] EWHC 532 (KB) [2] (**Ping Fai**).
16 See *Bybit Fintech Limited v Xin* [2023] SGHC 199 [1] (**ByBit**).
17 [2025] 1 WLR 821 [68].
18 Ibid [68]; also in the case of Bybit.
19 *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**).

The CC further held that, in context, particularly having regard to s 73, the reference in the definition of "property" to things in action, money and other intangibles indicates that the provisions are not to be read as a code or in isolation. Those items take their meaning from the common law and it is appropriate to determine how the common law has dealt with the question of whether Bitcoin is property (CC [38] CAB 018).

22. The CC then refers to and relies on Ruscoe and Blockchain (CC [40]-[52] CAB 018-021). The CC states that Ruscoe describes why the Ainsworth tests are satisfied (CC [42] CAB 019). The CC notes how Ruscoe addresses the argument that there are only two classes of personal property, tangibles and choses in action, finding that, if that is the case, crypto must be a chose in action (CC [44] CAB 019). The CC further states that the decision also dealt with the question of information being recognised as property, the position put forward by the appellant (CC [45] CAB 019). The CC then quotes from Ruscoe as to why crypto is not information and implicitly adopts it ([45]-[46] CAB 019-020).

23. The CC's consideration of Blockchain highlights that Attiwill J found the Bitcoin could not be the subject of bailment as it was physical property and posed the question "which appears perhaps to be unnecessary for the decision required" as to whether an interest in Bitcoin was property ([47]-[48] CAB 020-021). That consideration then highlights that Attiwill J described property as a legal relationship with a thing; that Attiwill J extensively reviewed overseas authorities including Ruscoe and advanced five reasons for why an interest in Bitcoin is property, in effect they are the Ainsworth tests (CC [49]-[53] CAB 021-022).

24. The submissions of the appellant that the workings of crypto are commonplace, a credit entry in software, mere information and that may at some point become money (CC [55] CAB 022) are rejected as unreal and do not deal with the evidence before the CC as to the nature and extent of the use of crypto in Australia and that it is used as an investment vehicle and store of wealth (CC [56]-[57] CAB 022-023). The CC finds that a sufficient number of people use Bitcoin and that "because a large number of people treat it as property" and that is the question to be answered here not the status of crypto more generally (CC [57]-[59] CAB 023). The VSCA upheld the decision of the CC. (VSCA [132]-[134] CAB 053).

25. The VSCA describes the nature of Bitcoin and what is property (VSCA [21]-[28] and [29]-[30] CAB 034-035). The VSCA rejected the appellant's 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 that the "same is not true for Bitcoin". The VSCA holds that Bitcoin is not information that 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 (VSCA [66]-[69] CAB 041-042).

26. The VSCA holds 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" (VSCA [70]-[71] CAB 043). The method to achieve being rivalrous is immaterial VSCA [73]-[76] CAB 043-044).

27. The VSCA holds 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 (VSCA [74]-[75] and [83] CAB 044).[20]

28. The VSCA places weight on the description in the United Kingdom Law Commission reports[21] 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".[22] 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" (VSCA [83]-[84] CAB 045-046).

29. The VSCA holds that Bitcoin satisfies the Ainsworth tests. The VSCA holds Bitcoin is more than mere information (VSCA [93] and [95]-[114] CAB 047 and 047-050). Bitcoin is an intangible "thing", as the data manifesting it is a set of unique

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[20] However, see D Fox *Property Rights in Money* (Oxford 2008) [1.144]-[1.151].

[21] 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**).

[22] The Bitcoin system has undergone such a copying when hard forks have occurred (e.g. Bitcoin Gold created).

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 (VSCA [95]-[96] CAB 047-048).[23] The 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 (VSCA [97], [98] and [99]-[100] CAB 048).

10 30. 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 (VSCA [101]-[102] CAB 048-049). 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 holds 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 (VSCA [106]-[108] CAB 049).[24]

20 31. 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" (VSCA [112] CAB 050). 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 (VSCA [112]-[113] CAB 050).

32. The VSCA holds Bitcoin is "property" and intangible property for the purposes of s 72 of the Crimes Act (VSCA [95], [123] and [132] CAB 048, 051-052 and 053). It is "capable of being dishonestly appropriated (VSCA [123]-[124] and [132]-[133] CAB 051-052 and 053). The VSCA decides that there is no public policy reason for not
30 treating Bitcoin and other digital assets as property. Not recognizing them as property would leave legitimate transactions vulnerable and would not ameliorate their misuse

[23] Citing Ruscoe [105]-[108] and ByBit [31].
[24] The VSCA does not deal with how this loss occurred. The system needs some computer access and skills, and depends on access to an uncompromised wallet, including not forgetting any seed phrase.

(VSCA [131] CAB 052).

33. **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 the Full Court of the Supreme Court of Tasmania (**TSCFC**) in respect of ongoing case, *Poulton v Conrad* (**Poulton**),[25] a matter currently before this Court.[26] It is the only[27] other Australian intermediate appellate decision where there is an extensive discussion of the nature of Bitcoin. The decision in Poulton was delivered between the time of the hearing of the appeal in the VSCA and the VSCA delivering its judgment. We dispute the Full Court's holdings in respect of Bitcoin, as will be apparent from the substantive submissions in Part VI(3).

34. In the TSCFC, 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.[28]

35. 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".[29]

36. In the TSCFC 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.[30]

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25 [2025] TASFC 7.
26 H1/2026.
27 Wallet Ventures pre-dates Poulton 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.
28 [2025] TASFC 7 [51]-[52].
29 Ibid [55].
30 Ibid [77]-[79].

37. 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.[31]

38. Estcourt J rejects the view in *Your Response Ltd v Datateam Business Media Ltd*[32] (**Your Response**) that information could not be the subject of a lien, and the decision in *OBG Ltd v Allan*[33] (**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.[34]

39. 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.[35] 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.[36]

40. Since the VSCA decision, the Court of Appeal (**EWCA**) in *R v Lakeman*[37] (**Lakeman**) has held that virtual "gold pieces" in a video game are property capable of being stolen. The EWCA relied on aspects of the VSCA decision[38] as support for departing from the orthodox rule that mere information is not property, and for treating digital ledger entries

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31 Ibid [78]-[87]; Estcourt J cites *Henderson v Walker* [2019] NZHC 2184 and *AA v Persons Unknown* [2019] EWHC 3556; [2020] 4 WLR 35 (**AA**) as supporting that view, ibid [87]-[89].
32 [2015] 1 QB 41
33 [2008] 1 AC 1.
34 [2025] TASFC 7 [90]-[91].
35 Ibid [93] and [97].
36 Ibid [100].
37 [2026] EWCA Crim 4; [2026] 2 WLR 696; [2026] 1 Cr App R 19. (Permission to Appeal application not decided by UKSC as at COB 21 May 2026.)
38 Ibid [65]-[66].

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.[39] 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,[40] 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 in civil law.[41] The EWCA also quoted from *United Aircraft Corporation v Federal Commissioner of Taxation,*[42] (**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.[43] The EWCA decision is also to be contrasted with the UKLCR doubting that 'in game' tokens would constitute property.[44]

41. Other intermediate appellate decisions from the UK, Singapore and the USA touch on the issue. In Tulip[45] 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.[46] 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."[47]

42. The Court of Appeal of Singapore in *Quoine Pte Ltd v B2C2 Ltd*[48] (**Quoine2**), noting it had been common cause below that the items were property, left it to another day to decide the point.[49] In *Van Loon v Department of the Treasury*[50] the US Court of Appeal, 5th Circuit, held that Tornado Cash was not property. The Court expressed the view that

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39 Ibid [84]-[87].
40 Ibid [68]-[69], [70]-[81] and [84].
41 Ibid [65]-[66].
42 (1943) 68 CLR 525.
43 [2026] EWCA Crim 4 [53] and [85].
44 Ibid [78]-[81].
45 Tulip [1].
46 Ibid [1] and [7].
47 Ibid [72].
48 [2020] SGCA(I) 02; [2020] 2 SLR 20, Quoine on appeal.
49 Quoine2 [6], [144]. Also see *CLM v CLN, CLO, CLP,CPZ,CQA,CQB,CQC* [2022] SGHC 46 [43].
50 No. 23-50669 (5th Cir. 2024).

property requires ownership, ownership requires some dominion over the item and crypto was a form of smart contract.[51] It was immutable, and it was not capable of being owned.[52] The Ether in *Van Loon*, "Tornado Cash", did not depend on a 'proof of work' but on self-executing code.

43. 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 as already described.

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

45. 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.[53] That line of authority is not supported elsewhere, including Australia.[54]

46. In D'Aloia (**D'Aloia**), Farnhill J held that cryptoassets are more than mere data - they are a set of transactional functionalities.[55] Farnhill J did not consider if confidential information has similar attributes, value, use, purpose and transactional functionality.

47. In a very recent decision of *Ping Fai Yuen v Fun Yung Li*[56] (EWHC) (**Ping**) Cotter J was required to consider interlocutory applications inter alia to strike out a claim in conversion in respect of Bitcoin and for substituted service. The Bitcoin was held through the use of a Trezor cold wallet. It was alleged that the plaintiff's estranged wife used the seed phrase to recreate the wallet on a separate device.[57] Cotter J considered

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[51] 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.
[52] Ibid 565.
[53] Ibid [90]-[98].
[54] See Katherine Hu "Property or Not? Digital Files Under the Criminal Law" (2017) 4 *PILJNZ* 106 (**Hu**).
[55] [157]-[159]. A decision about Tether, also described as USDT, a stablecoin [2].
[56] [2026] EWHC 532.
[57] Ibid [2]-[5].

OBG, *Colonial Bank v Whinney*[58] (**Whinney**), UKLCR, Your Response, AA, *Jones v Persons Unknown*[59] and some United States and Canadian decisions.[60] Cotter J concluded that it would offend the common understanding of property rights if the claimant was not able to recover the Bitcoin or damages for its value but in view of OBG the tort of conversion was not available in respect of Bitcoin and was struck out.[61]

48. 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;[62] proceeds of crime;[63] interlocutory or interim order matters;[64] and in liquidation matters.[65] There are some decisions where crypto has been found not to be property, such as foreign insurance and bankruptcy decision.[66]

49. **Part VI(3) – Information.** Neither information nor knowledge is property,[67] whether described as "pure information", "simple information" and "information more generally".[68] 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.[69] (Obviously a statute may adopt a particular, broad definition.[70]) Either all knowledge is property or it must be possible to state a criterion to distinguish between knowledge that is property, and that which is not property. Describing it as confidential information does not alter that, a

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58 (1885) 30 Ch D 261; (1886) 11 App Cas 426.
59 [2022] EWHC 2443.
60 [2026] EWHC 532 [62]-[64].
61 Ibid [77]-[79].
62 *Ressel v Morath* [2022] FedCFamC1F 863.
63 *DPP v Kustic* [2023] ACTSC 368, [25].
64 *Australian Securities and Investments Commission v NGS Crypto Pty Ltd* (No 3) [2024] FCA 822. [51].
65 *Re Gatecoin Ltd (In Liquidation)* [2023] HKCFI 914.
66 *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).
67 Authorities on copyright, patents and trade marks have no bearing on the question, United Aircraft 533–6.
68 Yeates [80].
69 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).
70 See footnote 91.

view that has been repeatedly adopted in Australia and elsewhere.[71]

50. It has been variously said that Bitcoin is different because: it is not "mere" information (VSCA [108] and [123] CAB 049-050 and 051-052) or "pure" information (VSCA [81] CAB 045); it is more than merely a collection of information and data;[72] the information on the blockchain does not remain immutable; it has a conceptual existence independent of the legal system and its users (VSCA [47] and [68] CAB 039 and 042); it cannot be double spent (VSCA [85] CAB 046); it is rivalrous (VSCA [68], [76], [82], [91], [123] and [129] CAB 042, 044, 045, 047 and 051-052);[73] it has greater functionality (VSCA [74]-[75] CAB 044);[74] the whole purpose of crypto is to create something with tradeable value (VSCA [74]-[76] CAB 044);[75] it is valuable, it is a species of wealth, it is similar to a PIN;[76] it is analogous to money (VSCA [76] and [85] CAB 044 and 046); 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 (VSCA [75] and [77] CAB 044); it is traded commercially.[77]

51. 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.

52. 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.[78] The confidential information is usually created

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71 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.
72 Poulton [51].
73 Much software maintains a degree of rivalrous in its ledgers.
74 Poulton [51] and [77]; D'Aloia [2].
75 Poulton [51] and [77].
76 Poulton [51].
77 Poulton [51].
78 Pancontinental.

to be exploited economically, whether by use or disclosure. Confidential information is protected by the law, but not because it is property.[79] 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 (VSCA [104] CAB 049).[80] 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[81] and product goodwill,[82] 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,[83] including by government in payment of tax. A PIN is information used to access an account, pursuant to a contract. It is not property, the PIN simply remains information.

53. 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.[84] Property is a concept of the law and enforceable by the law.[85] 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,[86] though it is not wholly self-executing, unlike some other smart systems. That Bitcoin uses a known cryptographic system to "prevent double spending" (VSCA [24] CAB 034) does not place it in a legal framework known to the law. There is no law that governs any enforcement against the blockchain.[87] 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.[88]

54. 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

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79 Farah; MGL [42.135].
80 Land may be the subject of toxic contamination and have negative value, it is still property.
81 Victoria Park 496, 509, 523; K Gray "Property in Thin Air" (1991) 50 *Cambridge Law Journal* 252 (**Gray**).
82 *Hospital Products Ltd v United States Surgical Corporation* (1984) 156 CLR 41, 145.; Gray.
83 *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.
84 N C Seddon and M P Ellinghaus *Cheshire and Fifoot's Law of Contract* (9th Australian Edition 2008) [1.16].
85 *National Trustees Executors and Agency Co Ltd v FCT* (1954) 91 CLR 540 (**National Trustees**), 584.
86 Satoshi Nakamoto, 'Bitcoin: A Peer-to-Peer Electronic Cash System' (31 October 2008); Yeates [24].
87 There may be contractual or other legal obligations arising between persons engaged in trading, holding or utilising Bitcoin, as occurred in Blockchain or using crypto exchanges.
88 [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.

the string of code. As also said in Tulip, all that exists is software, nothing else (VSCA [73], [91] and [112] CAB 043, 047 and 050).[89] 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 (VSCA [75] CAB 044). 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".[90] 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. But that has occurred through legislation.[91]

55. **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 persons in respect of a thing, assuming there is a thing.[92] There is no thing. Bitcoin is simply information in a database - one that may have unique or unusual characteristics.

56. 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.[93] 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".[94] 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.[95]

57. For the Ainsworth tests to apply,[96] there must be more than "mere information" (VSCA [93] CAB 047). 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

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[89] Tulip [16].
[90] *Moss v Hancock* [1899] 2 QB 111.
[91] *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).
[92] *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].
[93] Moss 115-116; *Travelex*.
[94] Moss 116. There is no evidence that it passes freely from hand to hand, the evidence in this matter is to the contrary (T 84-86 FM 0092-0094). It cannot be used to buy petrol (T 85 FM 0093). However, see conclusion of the CC (CC [57] CAB 019).
[95] 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).
[96] 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.

stability. The CC considered the Ainsworth tests and considered they were satisfied (CC [58]-[59 CAB 023). The VSCA considered the Ainsworth tests were satisfied (VSCA [93]-[114] CAB 047-050).

58. 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 a 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.

59. The VSCA describes the Ainsworth identifiable characteristic as requiring a power to exclude others from the asset. This test is described in Blockchain[97] adopting that approach from Ruscoe (VSCA [98]-[99] CAB 048).[98] Identifiability and excludability are two very different concepts, Ruscoe considers excludability as being part of this test, without authority.[99]

60. 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 cryptography 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 (VSCA [102] CAB 049).[100]

61. Stability is the fourth Ainsworth requirement. Bitcoin is not stable. It is highly volatile. Its value has undergone large swings.[101] No resource underpins it. It is based 'on a

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97 Blockchain [385].
98 Yeates [112]-[113]
99 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].
100 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**).
101 (T 88 FM 0096).

"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.[102] 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 (VSCA [107] CAB 049).[103] That 20% of Bitcoin has so far been lost, only further highlights its instability (VSCA [108] CAB 049).[104]

62. In Poulton, Shanahan CJ also stated[105] that the courts have focused on a number of integers: whether it is possible to exclude others from the right,[106] whether in commerce it is treated as valuable,[107] and enforceability against third parties generally.[108] These are not exclusive attributes, as already submitted. Those attributes can also apply to confidential information.[109] Shanahan CJ later discusses possession, quoting from Pollock & Wright,[110] noting a difference between *de facto* possession and possession at law,[111] paraphrased as "effective occupation or 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.[112] 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 (VSCA [49] CAB 039).[113]

63. **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 the keys, 'computer programs', being a set of statements used in a computer to bring about a certain result. It is the bitcoin program

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[102] Robert Stevens, 'Should Crypto Be Property?' <https://ssrn.com/abstract=5536058>.
[103] The blockchain can be changed by consensus and entries could be overridden.
[104] A right ceasing on the loss of information does not sit easily with a concept of property.
[105] Poulton [25].
[106] *Milirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141, 272.
[107] *Halywood Corporation Ltd v Chief Commissioner of Stamp Duties* (1992) 33 NSWLR 395, 403.
[108] *Wily v St Georges Partnership Banking Ltd* (1999) 84 FCR 423, 426.
[109] See paragraph 56 above.
[110] F Pollock and R Wright *An Essay on Possession in the Common Law* (1888) 12-13 and 16.
[111] Poulton[53]-[54].
[112] 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.
[113] The VSCA did not deal with the possibility of delay in processing or a failure to process a transaction.

that effects the result. The private key simply allows access, like a PIN. Nor is it a documentary intangible.

64. 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 Whinney. It is now addressed by legislation in England and Wales.[114] Moore-Bick LJ in Your Response[115] 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,[116] relying in part on Your Response going too far and that certain statutory licenses may be treated as property.[117] In Ping, Cotter J held that he was bound to follow OBG.[118]

65. The VSCA states that in Australia the dichotomy between choses in possession and choses in action is not viewed as strict and "that they do not confer the present possession of a tangible object" (VSCA [117] CAB 051). The VSCA recognised that there were differing views on this aspect and was of the view that it was unnecessary for the VSCA to resolve the issue as Bitcoin was property for the purposes of s 72 of the Crimes Act and "It must be, at least "other intangible property" (VSCA [120] CAB 051).

66. Both VSCA and Lakeman now give digital tokens (whether Bitcoin or 'in game' tokens) greater status than money in a bank. In *R v Preddy*[119] (**Preddy**) the House of Lords held 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,*[120] in this Court, the plurality affirmed that bank account balances are not money in a proprietary sense capable of theft.

67. **Control, Powers & Property.** Even a power to do something or the ability to control something has not by itself constituted property.[121] More is required. Even the holder of

[114] *Property (Digital Assets etc) Act 2025* (UK).
[115] [2015] QB 41 [26] with whom Davis and Floyd LJJ agreed. In National Trustees 584, see further below.
[116] [2019] EWHC 3556 (Comm) [59].
[117] Ibid [58]-[59].
[118] Ping [78].
[119] *R v Preddy* [1996] AC 815,834.
[120] *Croton v R* (1967) 117 CLR 326.
[121] *Re Armstrong* (1886) 17 QBD 521, 531; *Jones v Clifton* 101 US 225 (1879).

a general power is not always regarded as an owner, a proprietor, in all situations.[122]

68. **Burgeoning Legislative Treatment.** In Poulton, Shanahan CJ held that confirmation or recognition of crypto as property "would be consistent with the burgeoning legislative treatments of such assets as property".[123] 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) not be prevented from being an object of personal property.[124]

69. **Public Policy.** The VSCA rejected the contention that there were public policy reasons for holding that Bitcoin was not property. The VSCA stated that Bitcoin has assumed importance in the modern world and whilst crypto may be used in connection with scams the refusal of the law to recognise them as property would not ameliorate such use and would leave investors vulnerable and with fewer protections. Further, such issues are not dealt with by denying that such items are property (VSCA [130]-[131] CAB 052).

70. **Bitcoin is Not Money.** The VSCA accepted that Bitcoin had not achieved the status as currency (money) as at January 2019 nor at the date of the decision (VSCA [126]-[128] CAB 052). It was simply analogous to a form of money (VSCA [129] CAB 052).

71. **Part IV(4) – Bitcoin is not property for the purposes of s 71 of the Crimes Act.** As submitted at [49] and following, Bitcoin is not property and is not property for the purposes of section 71 of the Crimes Act. See the English texts, relevant because of the origins of these provisions.[125]

72. **Part IV(5) – Bitcoin cannot be the subject of dishonest appropriation pursuant to section 72 of the Crimes Act.** The CC held that "the allegation that the accused appropriated Bitcoin in practical terms alleges that he dishonestly appropriated a public key, recognised by the Bitcoin software and its many users as an unspent transaction output, with its matched private key. In doing so, it will be alleged that he acquired an item of commercial value that can be used as a medium of exchange, that was recognisable by third parties as such, and which could be readily exchanged for

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[122] *Tasarruf Mevduati Sigorta Fonu v Merrill Lynch Bank and Trust Company (Cayman) Limited* [2012] 1 WLR 1721 [31]-[46].

[123] Poulton [52].

[124] 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).

[125] As to trade secrets and information: Bridge et al, *The Law of Personal Property* (3d) pp 293 [10-042] & 294 [10-045]. ATH Smith, *Property Offences*, pp 53-55 [3-17] – [3-18]. A contrary view in Fox & Green (eds) *Cryptocurrencies in Public and Private Law*, a chapter by Charles Proctor "Cryptocurrencies in International and Public Law Conceptions of Money", pp 43-44 [3.27] – [3.29] fails to deal with the contextual issue arising from **Preddy**, below [73]–[74], which would confine "property", for example to something capable of assumption.

money." (CC [60] CAB 023-024). The VSCA also held that a charge of theft preferred in relation to the "dishonest appropriation of Bitcoin pursuant to s 72" of the Crimes Act is sound in law (VSCA [132] CAB 053).

73. As already described in Preddy the House of Lords held 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" as required by s 72 (s 15(1) of the *Theft Act 1968* (UK), similar to s 81(1) of the Crimes Act) was obtained; the victim's chose in action was extinguished and a new chose in action was created in favour of the defendant.[126]

74. Whilst it may be said that for the purposes of the Ainsworth tests the item need not be assigned but may be surrendered and a new item provided in its place: the requirement of s 72 is that the person appropriate property belonging to another. The precise nature of the transaction cannot be ignored for these purposes.[127] In the case of Bitcoin a person does not obtain the UTXO of the person purporting to transact it in their favour. Rather, the intended recipient of the UTXO obtains a new item on the blockchain, as already described, which is matched to his address and public key (from his private key). This item only comes into existence after completion of the proof of work. It may or may not correspond at that point on the blockchain with the UTXO formerly held at an earlier different address, and it may only be part of that UTXO. As Lord Goff in Preddy further said of s 15(1), and by analogy here, s 72(1) "is here being invoked for a purpose for which it was never designed, and for which it does not legislate."[128] Thus, it is for the legislature, not the courts, to expand the status of, and protection afforded to, Bitcoin.

Part VII: Orders Sought

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

Part VIII: Time Required for Presentation of Argument

76. 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: 21 May 2026

Mr DW Marks KC
Telephone: 07 3236 5477
Email: dmarks@qldbar.asn.au

[126] As also described earlier that is consistent with *Croton v R* (1967) 117 CLR 326.
[127] Preddy 841.
[128] Preddy, Ld Goff 834, Lds Mackay of Clashfern LC, Ld Slynn of Hadley and Ld Hoffmann agreeing and Ld Jauncy of Tullichettle 841. Preddy is not mentioned in Lakeman.

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)
Victorian Legislation					
1	*Crimes Act 1958* (Vic)	283	**S 71 Definitions** (1) In this Division— ***gain*** and ***loss*** are to be construed as extending only to gain or loss in money or other property, but as extending to any such gain or loss whether temporary or permanent; and— (a) ***gain*** includes a gain by keeping what one has, as well as a gain by getting what one has not; and (b) ***loss*** includes a loss by not getting what one might get, as well as a loss by parting with what one has; ***goods*** except in so far as the context otherwise requires, includes money and every other description of property except land and includes things severed from the land by stealing; ***property*** includes money and all other property real or personal including things in action and other intangible property. (2) In this Division property shall be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest). **S 72 Basic definition of theft** (1) A person steals if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it. (2) A person who steals is guilty of theft; and "thief" shall be construed accordingly.	The prosecution alleges that on 29 January 2019 the appellant used a seed phrase to rebuild the Trezor wallet, which at that time facilitated access to 81.61677759 Bitcoin and the transfer of a wallet under the appellant's control.	29 January 2019