HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
HOBART REGISTRY

H1/2026

BETWEEN:

ADAM POULTON
Appellant

and

JEFF CONRAD
Respondent

OUTLINE OF ORAL SUBMISSIONS OF THE RESPONDENT

PART I CERTIFICATION

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

PART II OUTLINE OF ORAL SUBMISSIONS

Ground (1):

Proposition 1: Property is a broad concept that is concerned with a relationship with a thing, not the thing itself.

2. *Yanner v Eaton* (1999) 201 CLR 351 at [17]-[21] (Gleeson CJ, Gaudron, Kirby and Hayne JJ) (**JBA 3(27) 817-819**); *Hocking v Director-General of the National Archives of Australia* (2020) 271 CLR 1 at [89]-[90] (Kiefel CJ, Bell, Gageler and Keane JJ) (**JBA 2(19) 443**).

3. The common law has developed a range of approaches to identify property. The criteria in *National Provincial Bank v Ainsworth* [1965] AC 1175 at 1247-8 (Lord Wilberforce) (**JBA 4(33) 1112-1113**) are commonly used, but are not definitive.

Proposition 2: Rights and interests in Bitcoin are property.

4. While Bitcoin is a system or protocol which has a number of features, those features serve the function of giving the UTXO ('unspent transaction output') tradable value in unique and identifiable units. The most important of these features is the private key, which confers practical control over, and rights in, the UTXO (i.e., 'the thing'): Professor D Fox, 'Digital Assets as Transactional Power' (2022) (**JBA 6(54) 1702**).

5. Bitcoin is 'property' with reference to the *Ainsworth* criteria and has been accepted as such by courts in Australia and other common law countries. Bitcoin is also societally accepted as being tradeable and of significant commercial value. The common law would be idle to deny its status as property.

Proposition 3: Bitcoin is not mere information.

6. While the appellant's submissions point to the fact that components or features of the Bitcoin system are information, this ignores the valuable output of the system – the UTXO – which is both rivalrous and exhaustible: *R v Lakeman* [2026] KB 255 at [32]-[33] (**SJBA 3(38) 231-232**).

Proposition 4: Questions of classification do not alter the conclusion that rights and interests in Bitcoin are property.

7. Defining property according to the *Colonial Bank v Whinney* dichotomy engages in 'false thinking'. *Colonial Bank* was not a case about the outer limits of property: *AA v Persons Unknown* [2020] 4 WLR 35 at [58] (**JBA 4(28) 886-887**).

8. Adhering to a binary classification directs attention to the 'thing', rather than the relationship with the thing: Edelman, J and Elliot, S, 'Two Conceptions of Equitable Assignment' (2013) (**JBA 6(51) 1645-1646**). The dichotomy no longer reflects today's commerce and intercourse: FC [90] (Estcourt J) (**CAB 77**).

Proposition 5: However classified, Bitcoin is capable of being possessed – and, therefore, can be the subject of conversion and detinue.

9. Cogent theories of possession identify the concept of possession as requiring both physical control and an intent to control, so long as the 'thing' in question is excludable and exhaustible: Green, S and Randall J, *The Tort of Conversion* (Hart, 2009), Ch 5 (**JBA 6(59) 1796-1799**). Intent can be established in respect of Bitcoin, as with any chattel. Indirect physical control can be effected by controlling the Bitcoin with the private key. Control with a private key is conceptually no different to controlling a chattel with a tangible key.

10. That possession – and by extension, the torts of conversion and detinue – has been discussed as a relationship with a corporeal thing or chattel (e.g., *Penfolds Wines Pty Ltd v Elliott* (1946) 74 CLR 204 at 229 (Dixon J) (**JBA 2(23) 676**) is a product of history. Historically, the integers of possession, when applied to 'things' could only conceivably apply to tangibles. Now the world is replete with intangible 'things' which are excludable, exhaustible and susceptible to control via e.g., passwords.

11. The features of Bitcoin comfortably fit within that rubric of possession, conceived as intent to control and indirect physical control via the private key: FC [87]-[88]

(Estcourt J) (**CBA 73**) and FC [55] (Shanahan CJ) (**CBA 66**). That being so, the torts of conversion and detinue, being concerned with vindicating superior possessory rights, can apply to Bitcoin.

Proposition 6: The torts of detinue and conversion are made out on the facts.

12. The appellant does not challenge any of the factual findings made in the Magistrates Court. Those facts are sufficient to satisfy the elements of conversion and detinue.

Ground II:

13. The *ratio* of the Full Court was the outcome of a discretion exercised by Shanahan CJ (at FC [49] **CAB 65**) with whom Jago J agreed (at FC [99] **CAB 80**).

14. The appellant had argued in the Court below that Bitcoin *could be* possessed, and in fact was possessed, by the appellant's company, Get Paid in Bitcoin Pty Ltd: SC [27] **CAB 45**; see also **RFM 17 and 53-54**. Before the Full Court, the appellant then said that argument was imbued with legal error. This context was of particular importance to the exercise of the discretion.

15. The issues before the Full Court were to be heard by way of rehearing, subject to the Full Court's powers in s 47, *Supreme Court Civil Procedure Act 1932* (Tas) (**JBA 1(9) 176-177**). These issues were not at large. It is fundamental to the administration of justice that the substantial issues between the parties are settled at trial: *Coulton v Holcombe* (1986) 162 CLR 1 at 7 (Gibbs CJ, Wilson, Brennan and Dawson J) (**JBA 2(14) 281**). The rationale for that rule is to encourage finality in litigation, which rationale applies equally to points abandoned on an intermediate appeal.

16. The standard of appellate review here is the rule in *House v The King* (1936) 55 CLR 499. The exercise of discretion by the Full Court did not miscarry.

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