



CRYPTOCURRENCY AND LITIGATION

Maria Koureas-Jones
Francis Wilks & Jones



Is cryptocurrency property and an asset of an insolvent estate?

Legal Statement on cryptoassets and smart contracts:

LAWTECH DELIVERY PANEL, UK JURISDICTION TASKFORCE

[85] Whether English Law would treat a particular cryptoasset as property ultimately depends on the nature of the asset, the rules of the system in which it exists, and purpose for which the question is asked. However:

- a) Cryptoassets have all of the indicia of property
- b) The novel or distinctive features possessed by some cryptoassets – intangibility, cryptographic authentication, use of a distributed transaction ledger, decentralization, rule by consensus – do not disqualify them from being property;
- c) Nor are cryptoassets disqualified from being property as pure information, or because they might not be classifiable either as things in possession or things in action
- d) Cryptoassets are therefore to be treated in principle as property
- e) But a private key is not in itself to be treated as property because it is information.



Is cryptocurrency property and an asset of an insolvent estate?

- Court confirmed that cryptocurrency is property in AA and Persons Unknown who demanded Bitcoin on 10th and 11th October 2019 (1) Persons unknown who own / control specified Bitcoin (2) iFINEX trading as BITFINEX (3) BFXWW INC trading as BITFINEX (4):

[61] “In those circumstances and for the reasons I have given, as elaborated upon in the Legal Statement which I gratefully as what I consider to be an accurate statement as to the position under English law, I am satisfied for the purpose of granting an interim injunction in the form of an interim proprietary injunction that crypto currencies are a form of property capable of being the subject of a proprietary injunction.”

- Court re-affirmed in Zi Wang c Graham Darby [2021] – cryptocurrencies are ‘property’ capable of being subject to a trust.
- s436 (1) Insolvency Act 1986 defines property as:

“property includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property”



Where are we seeing Cryptocurrency in litigation?

Pre-Insolvency:

- Shareholder disputes in ICOs
- Individuals seeking payment for services delivered to ICOs
- Scams involving investments in ICOs and Exchanges
- Disputes with intermediaries (eg. brokers)
- Matrimonial disputes
- Commercial Disputes
- Contentious probate where the deceased held cryptocurrency
- Inability to pay arguments



Where are we seeing Cryptocurrency in litigation?

Post-Insolvency:

- Insolvency of an entity trading cryptocurrency
- Corporate insolvency of entities not trading cryptocurrency
- Personal insolvency
- Inability to pay arguments



Complicating factors with Cryptocurrency

- Is the cryptocurrency held property?
- How do you identify how much cryptocurrency is held? (e.g. where other party refuses to disclose / where books and records are misleading)?
- The speed at which cryptocurrency can be disposed.
- How do you recover cryptocurrency held by a third party?
- The volatile nature of cryptocurrency and the impact on its value.
- Cross-jurisdictional components often exist.
- Fraud, scams and financial crime.
- Getting to grips with the terminology, technology and concept in an ever-evolving area.
- Investigation costs.



Maria Koureas-Jones:

mkj@fwj.co.uk

+44 (0)79 7918 0359