

Control and Ownership of Digital Assets

Edited by
MIRJAM EGGEN,
LINDA JENG,
and SEBASTIAN OMLOR

*Schriften zum
Recht der Digitalisierung*
44

Mohr Siebeck

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Herausgegeben von

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Control and Ownership of Digital Assets

A Comparative Law Survey

Edited by

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Mohr Siebeck

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Foreword

The rise of blockchain-based systems and digital assets has compelled courts, legislators, and regulators to confront foundational questions of private law. Central to these debates is the issue of *control*: who, in legal terms, has the ability to exercise dominion over a digital asset, to exclude others from it, and to transfer it to another? For much of the early history of digital assets, this appeared relatively straightforward. Externally-owned accounts (EOAs) premised on a single private key linked technical control and legal ownership in an apparently seamless way. Many early legal analyses, and even legislative frameworks, implicitly assumed this model, grounding the attribution of ownership in the possession of the key.

Yet this technical landscape has shifted dramatically. In the interest of enhanced security, user experience, and operational resilience, key management systems have evolved. Multi-signature arrangements, threshold signature schemes, multi-party computation (MPC) wallets, and account-abstraction mechanisms now distribute control across multiple actors or embed it within automated processes. These developments sever the simple one-to-one relationship between a single private key and legal ownership, raising complex questions for private commercial law. Frameworks premised on earlier wallet models risk obsolescence unless they adapt to these new realities.

This volume seeks to explore precisely this tension. It brings together leading scholars and practitioners to examine how diverse legal systems – both common law and civil law, national and international – approach the questions of control and ownership of digital assets. The comparative inquiry reveals not only doctrinal differences, but also shared concerns over legal certainty, market efficiency, and the adaptation of traditional legal categories to new technologies.

The chapters traverse a wide range of jurisdictions. Contributions from Germany, France, Switzerland, and Australia illustrate how civil law systems grapple with the limitations of traditional doctrines of tangibility and experiment with electronic securities legislation. The United States chapter analyzes the introduction of Article 12 to the Uniform Commercial Code, with its creation of “controllable electronic records,” and its attempt to extend concepts of negotiability and secured transactions to crypto-assets. The United Kingdom and Brazil chapters demonstrate how common law and hybrid systems have sought to adapt flexible doctrines to novel technical architectures. The Hong Kong and Singapore chapters show how Asian common law jurisdictions combine pragmatic judicial reasoning with increasingly granular regulatory oversight, par-

ticularly in relation to custody and safekeeping. The Mexico chapter highlights how pioneering statutory definitions – such as those in the 2018 Fintech Act – proved both innovative and unduly narrow, creating gaps in the classification of assets under private law. The Taiwan chapter examines the courts’ characterization of virtual assets as “movable things,” while suggesting a shift toward a ledger-based model of public notice. Finally, the chapter on UNIDROIT’s Digital Assets and Private Law Principles (DAPL) situates these national approaches within an emerging body of international soft law, where the concept of “control” serves as a functional analogue to possession.

Taken together, these contributions illustrate convergence in recognizing that digital assets must be capable of being treated as objects of property rights, while also exposing divergence in the doctrinal and institutional means by which that recognition is achieved. Some systems rely on legislative innovation, others on judicial creativity, and still others on contractual devices that fill the gaps left by statutory law.

This project originated in the recognition that private law frameworks continue to serve as the backbone of global commerce, and that they must now adapt to a technological environment in which control is no longer synonymous with the knowledge of a single private key. The editors were motivated by the conviction that without legal clarity, uncertainty in areas such as insolvency, enforcement, and cross-border disputes will proliferate, to the detriment of both users and institutions. Conversely, with careful doctrinal analysis and comparative engagement, private law can continue to perform its essential functions of structuring ownership, enabling transfer, and protecting legitimate expectations in commerce.

It is our hope that this volume will serve both as a reference for scholars, practitioners, and policymakers, and as a catalyst for further research and reform. The reconciliation of centuries-old concepts of ownership and possession with digital-native assets is among the central legal challenges of our time. By drawing together insights from across jurisdictions, the contributions collected here aim to advance a shared understanding of how private law can evolve to meet this challenge.

This outcome would not have been possible without the invaluable support of our research staff Patricia Sanchez, Michael Toneatti, and Hans Wilke. We also gratefully acknowledge the Ripple Impact Fund for covering the publication costs of this open access book.

Bern, Washington D.C., and Marburg, October 2025

Mirjam Eggen, Linda Jeng and Sebastian Omlor

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I. Introduction

“What is it about cryptocurrency that makes it a kind of property? Most fundamentally, the answer lies in the fact that it is actively bought and sold, and it is therefore sufficiently analogous to things which are already treated as property. And it would not be actively bought and sold unless it was sufficiently definable, identifiable by third parties, capable of assumption by third parties, and permanent and stable. These are all relative concepts and raise questions of degree.”¹

¹ *Justice Jackman*, *Is Cryptocurrency Property?*, Speech of 21 June 2024, <<https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-jackman/jackman-j-20240621>> (16 September 2025) 14.

Digital assets are becoming more prevalent in Australia's financial services and markets. As in other jurisdictions, their use is progressing from 'digital asset natives' to everyday investors and market participants. This has drawn into focus the need to answer key questions of personal property law. As shown by the above extra-curial quotation from an Australian judge, the first question – how digital assets are treated as property – is being answered. However, more questions of high relevance to commercial practice remain, such as how interests in that property, including security interests, can be established and protected.

This chapter explains the recent Australian judicial decision that answered the question of whether digital assets are property under Australian law, and how that answer differs from some other jurisdictions. Then, it examines the relevance of control in the treatment of interests in digital assets as property under Australia's common law,² and its two most relevant legislative security regimes. It touches on how those legislative regimes deal with the unresolved choice of law questions related to digital assets and concludes by identifying areas where Australian law could be developed to provide further certainty to support the use of digital assets in Australia's financial markets and systems.

II. Property in digital assets under Australian law

Although there have been many Australian cases concerning digital assets,³ Australian courts have taken their time in clarifying that digital assets are property under Australian law. In fact, it wasn't until November 2024 that a superior Australian court determined upon a trial of a proceeding that an interest in a digital asset is property.⁴

In *Re Blockchain Tech Pty Ltd*,⁵ the Supreme Court of Victoria decided that an interest in bitcoin was property under Australian law, constituted a chose in action, and could be the subject of a trust. The court also found that an interest

² In this chapter, the term "common law" is used in contrast with legislation and it includes principles of equity.

³ E.g., *Australian Securities and Investments Commission (ASIC) v. Web3 Ventures Pty Ltd* [2025] FCAFC 58; *Australian Securities and Investments Commission (ASIC) v. Finder Wallet Pty Ltd* [2024] FCA 228; *Australian Securities and Investments Commission (ASIC) v. BPS Financial Pty Ltd* [2024] FCA 457; *Australian Securities and Investments Commission (ASIC) v. Bit Trade Pty Ltd* [2024] FCA 953.

⁴ Some Australian courts have determined or proceeded up to an interlocutory application on the basis that a person's interest in a digital asset is property: *Australian Securities and Investments Commission v. NGS Crypto Pty Ltd* (No. 3) [2024] FCA 822. In others, digital assets were in effect assumed to be property, e.g., *Commissioner of the Australian Federal Police v. Bigatton* [2020] NSWSC 245; *Chen v. Blockchain Global Limited* [2022] 66 VR 30. See also *Jackman*, Property (n. 1).

⁵ *Re Blockchain Tech Pty Ltd* [2024] VSC 690.

in bitcoin could not be the subject of a bailment under Australian law because it was not tangible and could not be possessed.

Like decisions in other common law jurisdictions, the Court applied the principles set out by Lord Wilberforce in *National Provincial Bank v. Ainsworth*,⁶ namely that the bitcoin was identifiable subject matter, identifiable by third parties, capable of assumption by third parties and had some degree of permanence and stability.⁷ In doing so, the Court gave some important clarifications as to how these principles are to be applied to digital assets under Australian law:

- *Digital assets can fall within the broad meaning of property.* Property goes beyond traditional definitions of something that belongs to another or ‘a bundle of rights’. It refers to a degree of power exercised over a thing that is permissibly recognised by the law. An interest in bitcoin can fall within that description, as a unique digital address on a network of computers, identifiable by third parties, which has a degree of permanence or stability afforded by the cryptographic keys. Through this, “[a] person has the power to control and deal with the Bitcoin and to exclude third parties from accessing or dealing with it.”⁸
- *Digital assets do not need to be alienable to be property.* There are many examples under the Australian law of rights which are not capable of being assigned because of their nature or public policy, which are nevertheless considered to be property. Accordingly, the fact that a transaction in bitcoin results in the creation of a new record on the Bitcoin blockchain and not the actual transfer of the transferee’s interest in bitcoin does not affect the characterisation of an interest in bitcoin as property.
- *Digital assets are more than a mere interest in information.* Although Australian law is reluctant to recognise information as constituting property,⁹ an interest in bitcoin can be distinguished from a mere interest in information. This is because it includes the power to undertake transactions on a network using a public key and a private key, and to exclude third parties from accessing or dealing with the bitcoin.
- *Digital assets can be choses in action without being enforceable legal rights.* Australian law has already established that choses in action include more than enforceable legal rights against someone.¹⁰ They include different groups of rights which only have in common that “they do not confer the present possession of a tangible object.”¹¹

⁶ *National Provincial Bank v. Ainsworth* [1965] AC 1175.

⁷ [reference to other chapters of this book that refer to *Ainsworth* to be added].

⁸ *Re Blockchain Tech Pty Ltd* (n. 5) 385.

⁹ See *Farah Constructions Pty Ltd and Others v. Say-Dee Pty Ltd* [2007] 236 ALR 209, 246.

¹⁰ *Re Blockchain Tech Pty Ltd* (n. 5) 389.

¹¹ *Re Blockchain Tech Pty Ltd* (n. 5) 389.

This characterisation by the Victorian Court of bitcoin as a chose in action differs conceptually from the position of the United Kingdom Law Commission in its final report on digital assets,¹² and the basis of the United Kingdom's *Property (Digital Assets etc) Bill*.¹³ Due to the extent of property recognised as choses in action under Australian law, the Court did not find it necessary to find any "third category of things" beyond choses in possession and choses in action.¹⁴ This also aligns with the recent extra-curial comments of Jackman J:

"the mental gymnastics involved in creating a third category of personal property made up such diverse subject matter as milk and export quotas, on the one hand, and cryptocurrency, on the other hand, are an unnecessary distraction in the Australian context."¹⁵

The finding that a digital asset such as bitcoin can constitute property under Australian law is not remarkable in the context of the laws of the other common law jurisdictions analysed in this book. However, the finding that they constitute choses in action, and not choses in possession or a third type of property, is different to some other jurisdictions,¹⁶ and impacts the relevance of control to establishing interests in that property under the Australian common law.

III. Interests and control in digital assets under Australian common law

Control is not a core concept to proprietary interests in choses in action under Australian common law. Australian law does not recognise possession of choses in action, and it has no equivalent to the recognition of relative title in choses in possession. Legal title to choses in action is indivisible. While equitable interests in choses in action can be established, for example through assignments and trusts, and the concept of control can be relevant to the equitable rules which determine priorities between such interests,¹⁷ control does not perform a determinative role in establishing interests in choses in action.

The Court's decision in *Blockchain Tech* demonstrates how these principles apply to digital assets by its finding that a bailment over them was not possible, and that a trust over them, and beneficial interests in them, was established. The Court did not articulate any new principles applicable to choses in action that

¹² *United Kingdom Law Commission*, Digital Assets: Final Report of 27 June 2023, Law Com No. 412.

¹³ *Property (Digital Assets etc) HL Bill* (2024) 31 (UK).

¹⁴ *Re Blockchain Tech Pty Ltd* (n. 5). However, the case for recognising such a third category was given some judicial support in the subsequent decision of *Poulton v Conrad* [2025] TASSC 2.

¹⁵ *Jackman*, *Property* (n. 1). The Court in *Re Blockchain Tech* referred to comments of Justice Jackman in this speech: *Re Blockchain Tech Pty Ltd* (n. 5) 377.

¹⁶ [reference to relevant other chapters of the book to be added].

¹⁷ Cf. section III. 2. below.

are digital assets, nor did the court expressly call out control as a critical factor for any of its conclusions.

Nevertheless, *Blockchain Tech* does, by implication, provide some insights into the relevance of control of the private key relating to a holding of digital assets with respect to ownership, transfer and trusts under Australian law.

1. Relevance of control of private key to ownership of digital assets under common law

As noted above, the Court in *Blockchain Tech* found that bitcoin constituted a person's property under Australian law. The foundation of this property was the person's power to control and deal with the bitcoin, and to exclude others from doing so, through the private cryptographic key. This power established the rivalrous qualities needed for the bitcoin to have the necessary identifiability, capability of assumption, and degree of permanence and stability to be property.

The Court made no statement as to the level of control over the private key to constitute ownership. Nevertheless, it implied that a level of control over a digital asset's private key sufficient to deal with the digital asset, and prevent others from doing so, was a critical element of the digital asset's ownership. The Court referred to the New Zealand High Court's decision in *Ruscoe v. Cryptopia* at length including, most relevantly, the following:

"The degree of control necessary for ownership (namely the power to exclude others) is achieved for cryptocurrencies by the computer software allocating to each public key a second set of data made available only to the holder of the account (the private key), and requiring the combination of the two sets of data in order to record a transfer of the cryptocurrency attached to the public key from one account to another."¹⁸

Similarly, in his extra-curial comments referred to in the Court's decision, Jackman J said that holding the private key "confers practical control" over the digital asset.¹⁹

The importance of being able to control the private key in establishing property and ownership in digital assets is also conceptually consistent with the principle set out by the Australian High Court decision of *Yanner v. Eaton* (relied on in the *Blockchain Tech* decision).²⁰ In that case, which concerned "the quintessentially Australian problem of rights over hunting estuarine crocodiles",²¹ the Court defined property as a "legally endorsed concentration of power over things and resources".²² It follows that, if digital assets are property,

¹⁸ *Ruscoe v. Cryptopia Ltd (in liq)* [2020] 2 NZLR 809, 112.

¹⁹ Jackman, Property (n. 1) 2.

²⁰ *Yanner v. Eaton* [1999] 201 CLR 351.

²¹ Jackman, Property (n. 1) 2.

²² *Yanner v. Eaton* (n. 20).

then that concentration of power is derived from being able to transfer it to another, which is a consequence of holding and controlling the private key.

The importance of controlling the private key to ownership of a digital asset is not new. In its Statement on Cryptoassets and Smart Contracts, the UK Jurisdiction Taskforce noted, “The starting point, in our view, is that a person who has acquired knowledge and control of a private key by some lawful means would generally be treated as the owner of the associated cryptoasset.”²³ The UK Law Commission also recognised the significance of controlling the transfer of a digital asset as an integral part of the property comprised in the digital asset,²⁴ and in its definition of holding a digital asset “as the capacity to exercise, or to coordinate or direct, the exercise of full factual control”.²⁵

Accordingly, it is safe to conclude that control over the use of the private key relating to an interest in a digital asset is an important factor in determining the legal ownership of that digital asset under Australian law. However, it should be noted that there is nothing in the *Blockchain Tech* decision to indicate that control on its own is determinative of legal title.²⁶ Other circumstances, such as the presence of intermediated arrangements, can affect the holding of legal title, as noted further below.

2. Relevance of control of private key to transfers of digital assets under common law

As part of its finding that an interest in bitcoin constituted property, the Court in *Blockchain Tech* defined a “Bitcoin transfer transaction”, which had the effect of the bitcoin at the address of one person being replaced with bitcoin at the address of another. The transfer transaction depended on the use by the owner of bitcoin of their private key to “digitally sign a hash which records the details of the transaction.”²⁷ The Court did not expressly state that legal title to the digital assets passed with the private key in a manner similar to the US court in *Archer v. Coinbase*,²⁸ but the description of the transaction by the Court makes it clear that a change in control of a digital asset to a new private key was necessary for a transfer of title to a digital asset to take effect.

²³ UK Jurisdiction Taskforce, Legal Statement on Cryptoassets and Smart Contracts of November 2019, <https://technation.io/wp-content/uploads/2019/11/6.6056_JO_Cryptocurrencies_Statement_FINAL_WEB_111119-1.pdf> (16 September 2025) 13.

²⁴ United Kingdom Law Commission, Digital Assets (n. 12) 60.

²⁵ United Kingdom Law Commission, Digital Assets (n. 12) ch. 7.

²⁶ This aligns with the statement of the UK Jurisdiction Taskforce that “The ledger cannot however be treated as a definitive record of *legal rights* unless statute has given it binding effect”: UK Jurisdiction Taskforce, Legal Statement (n. 23) 30.

²⁷ *Re Blockchain Tech Pty Ltd* (n. 5) 386.

²⁸ *Archer v. Coinbase Inc.* 267 Cal.Rptr.3d 510, p. 243.

As previously noted, unlike the UK Law Commission, the Australian Court found no need to contemplate that digital assets constituted a third type of property and instead the Court found them to comprise a chose in action. This meant there was no need for the Court to consider special requirements for the transfer of digital assets as a third type of property, such as rules relating to sufficient control and intention.

However, the application of the Australian common law for transfers of, or interests in, choses in action to digital assets is complicated. This is because the law has been established based on an assumption that a chose in action is not independent of the legal system and has an obligor or trustee. In other words, the Australian common law rules for dealings in choses in action do not contemplate things which are established more through process than promise. This complexity can be seen in applying the rules for assignments of choses in action under law, and the priorities of interests in choses in action under equity.

– *Legal assignments of choses in action.* Under the Australian law, debts and “other legal choses in action” can be assigned in accordance with a statutory provision in the property conveyancing legislation of the various Australian states.²⁹ These provisions depend on the giving of express written notice of the assignment to the “debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action”.³⁰ They are not able to operate if there is no such person to whom notice could be given, as would be the case for many digital assets.³¹

It might be argued that, if a digital asset is a chose in action, then this is an impediment to the legal recognition of its transfer. However, the better view is that it is not. No such concern arose in *Blockchain Tech* where the Court expressly considered the way an interest in bitcoin could be transferred. Also, the statutory process for assigning choses in action at law is not exclusive for all choses in action. Instead, it is better seen as applicable to a “debt or right which the common law looks on as not assignable by reason of its being a chose in action, but which a Court of Equity deals with as being assignable.”³²

– *Priorities of interests in choses in action under equity.* Australian equitable principles provide rules for the priority of interests in choses in action, many

²⁹ *Federal Commissioner of Taxation v. Everett* [1980] 143 CLR 440; Civil Law (Property) Act (ACT) 2006 s. 205; Conveyancing Act (NSW) 1919 s. 12; Law of Property Act (NT) 2000 s. 182; Property Law Act (Qld) 1974 ss. 199–200; Law of Property Act (SA) 1936 s. 15; Conveyancing and Law of Property Act (TAS) 1884 s. 86; Property Law Act (VIC) 1958 s. 134; Property Law Act (WA) 1969 s. 20.

³⁰ Conveyancing Act (NSW) 1919 s. 12.

³¹ It could be argued that the law relating to assignments is irrelevant where there are no legally enforceable rights being transferred. However, assignment has been given an extended meaning by Australian courts, to be the “immediate transfer of an existing proprietary right”: *Norman v. Federal Commissioner of Taxation* [1963] 109 CLR 9, 26.

³² *Torkington v. Magee* [1902] 2 KB 427 at 434.

of which will also be difficult to apply to digital assets which have no obligor or trustee.³³ For example, there is a general principle that two equitable interests will rank in order of their temporal priority. However, there are three exceptions to this which could be instructive to a court seeking to determine priorities between competing interests in digital assets. They are:

- *Priorities between equitable assignees of personal property*: the holder of a later equitable interest in a chose in action can gain priority if they obtain their interest for value without notice of the existing interest, and they are the first to give notice of their interest to the person they are looking to for performance of the chose in action.³⁴ Just as with the legal assignment provision described above, this process may be difficult to apply literally for many digital assets as there may be no person who is responsible for performance to whom notice could be given. Nevertheless, it would be possible that a court could apply the principles of this rule to digital assets as choses in action by treating the recording of the transaction on the relevant digital asset system as amounting to notice required for such priority. This would reinforce the importance of control over the private key which would enable the transaction to be recorded.
- *Postponing conduct of holder of prior interest*: the holder of an equitable interest in property can have their priority postponed when their conduct has led someone to acquire a later interest in the belief that the earlier interest did not exist.³⁵ In some cases, this postponement has occurred because the earlier holder has armed a third party with the indicia of absolute ownership, which arguably could be satisfied by control of the private key. Alternatively, this postponement has occurred because it is reasonably foreseeable that a later interest will be created and that the holder of the later interest will assume that no earlier interest exists. Again, a court may find that failing to control the private key for a holding of digital assets meets the requirement of conduct sufficient to postpone a prior interest.
- *Bona fide purchaser for value without notice*: a subsequent transferee of the legal title to personal property who has given consideration, has acted in good faith and has no notice of the equitable interests of another in that property can take the legal title free of that equitable interest.³⁶ The most problematic element in practice in the application of this principle is ascertaining what

³³ The leading Australian treatise on these principles is *John D. Heydon/Mark J. Leeming/Peter G. Turner, Meagher Gummow and Lehane's Equity: Doctrines and Remedies*⁵ (2015). See in particular ch. 6 and 8.

³⁴ This equitable principle is often known as the rule in *Dearle v. Hall* [1828] 38 ER 475.

³⁵ This principle is not limited to personal property. An example of its application can be found in the High Court of Australia's decision in *Heid v. Reliance Finance Corp Pty Ltd* [1983] 154 CLR 326.

³⁶ The application of this to digital assets appears to have been implicitly accepted by the UK High Court in *Ellis v. Digit Europe Ltd* [2021] CL-2021-000733. See also *Helen Pugh*,

constitutes notice, and what level of enquiry is required on behalf of the receiver of the legal title. In a transaction in digital assets, it may be difficult to establish notice of anything other than the state of the digital asset system, on the basis that this would be the level of investigation usually made in similar transactions. In this context, factual control over the means to transfer the legal title would be a practical way of ensuring that no such legal transferee could arise.

Although the application of these common law principles to choses in action comprised of digital assets is complicated, none of them derogate from the importance of controlling the private key to ensure no change to the relevant digital asset system with respect to the digital assets can take place. In fact, a reasonable application of these principles to digital assets would support taking a high level of control over the private key to protect an interest in those assets.

It could be argued that these principles should not be relevant as there is no actual transfer of the chose in action. Instead, the consequence of the “bitcoin transfer transaction” as referred to by the Court in *Blockchain Tech*, is that “the old asset is replaced by a new one”.³⁷ Arguably, this termination of an existing interest and its replacement with a new one is more analogous to a novation of a contractual right than its assignment. However, even if this were found to be the case, this does not change the importance of controlling the private key to protect an interest in a digital asset so that the “novation” cannot occur.

Of course, it is common for digital assets to be held through intermediaries, such as digital asset exchanges. This has the potential to further complicate the application of common law principles applicable to choses in action. Under Australian law, this raises the need to consider trusts.

3. Relevance of control of private key to trusts over digital assets under common law

Further relevance of control can be inferred from the *Blockchain Tech* decision in relation to the trust over the defendant’s interest in bitcoin. The Court found that the bitcoin were subject to a trust because they were provided to the defendant by Blockchain Tech for the purpose of being sold by the defendant and it was a term of that trust that the proceeds were to be remitted to Blockchain Tech. Because the proceeds of sale were not remitted, the Court found that the defendant was liable to pay equitable compensation.

On its face, this finding supports the use of equitable principles to determine different interests in digital assets, rather than concepts of control. However,

Crypto fraud and the bona fide purchaser for value defence, *Butterworths Journal of International Banking and Financial Law* 2023, 5–7.

³⁷ *Jackman*, Property (n. 1) 12.

the decision does provide greater insight into the relevance of control to ownership of digital assets. This is because the relevant bitcoins were not transferred to the defendant by Blockchain Tech, but instead they were transferred to an address maintained by the defendant's husband. Consequently, the Court found that the husband held "a legal interest" in the bitcoins for the benefit of the defendant, and that the defendant held their interest as trustee for Blockchain Tech. If the assumption is made that the defendant's husband held the private key for the relevant address, which was not made clear in the decision, then this supports the view that practical control over the private key is required to support legal title to digital assets.

However, this is blurred by two further aspects of the case. First, it appears that the bitcoin was in an "account" which the defendant's husband held with a digital asset exchange. No clarification is made in the decision as to the legal nature of the relationship between the husband and the exchange, but it would seem unlikely that the exchange did not retain the private key to the relevant bitcoin. If only the digital asset exchange had access to the private key and the defendant's husband did not, it is hard to see that the defendant's husband did have any sort of legal interest in the relevant bitcoin. Instead, it would appear more likely that the legal title was held by the exchange and that the defendant's husband held a beneficial interest in the bitcoin.³⁸ Second, the nature of the relationship between the defendant and their husband is also unclear. The Court found that the transfers of the bitcoin from the account were made by the defendant. No clarity is provided as to how this took place given that the account was not in the defendant's name and no statements were made relating to the control of the account. However, as it is likely that the account represented a beneficial rather than legal title in the bitcoin, no inference can be taken from this relating to the relevance of control to legal ownership of digital assets.

Accordingly, it is possible that the case concerned more complex arrangements relating to the holding of the private key of digital assets, but there is insufficient information to determine what they are. Nevertheless, it remains clear that the Court determined the consequences of the arrangements between, and activities of, the parties by reference to equitable principles of trust and equitable compensation, rather than any control-based analogue to possession and relative title for choses in possession. This is consistent with the Court's finding that the interests in bitcoin comprised a chose in action.

³⁸ There is no analysis in the decision as to whether the "account" is a segregated or omnibus account.