

## Article Information

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## Australian superior court finds Bitcoin is property

**In an Australian legal first, Justice Attiwill of the Supreme Court of Victoria has determined that a person's interest in Bitcoin is property.**

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This case is ground-breaking, as it is the first superior court proceeding where an Australian court has found that a cryptocurrency possesses all characteristics of property. It brings Australia in line with other common law jurisdictions such as the [UK, New Zealand, Hong Kong and Singapore in recognising cryptocurrency as property at common law](#).

In [Re Blockchain Tech Pty Ltd \[2024\] VSC 690](#), the plaintiffs alleged that 36 Bitcoin (which are worth over AUD5 million based on market value current as at the date of this article) had been transferred to the first defendant on bailment and that Blockchain Tech was entitled to immediate possession of the same.

It was alleged that a further 25 Bitcoin which had been transferred from Blockchain Tech to an exchange to be dissipated for working capital purposes was held on trust by the first defendant as trustee. The plaintiffs argued that the defendant trustee had failed to fully account for the sums dissipated which had been partly misappropriated for personal expenses.

Citing [recent interlocutory judgments in Australia](#), and substantive judgments in [New Zealand](#) and [England and Wales](#), Attiwill J decisively ruled that a person's interest in Bitcoin (being intangible) is property as it satisfies the four classic criteria for property under the common law *Ainsworth* test - that is:

1. identifiable by subject matter;
2. identifiable by third parties;
3. is capable of assumption by third parties; and
4. has some degree of permanence or stability.

In elaborating on his reasons, Attiwill J stated:

First, **it is necessary to identify 'the thing'**. The thing is Bitcoin. It is an electronic coin.

Second, **an interest in Bitcoin is also identifiable by third parties...**the public key identifies an address of Bitcoin at that address on the shared public ledger. A person has the power to control and deal with the Bitcoin and to exclude third parties from accessing or dealing with it.

Third, **a person's interest in Bitcoin has a degree of permanence or stability.** Bitcoin are recorded on the shared public ledger...this contains the 'entire life history of a cryptocoin'...Bitcoin are held at a certain digital address. Bitcoin remain stable at the address until there is a transaction concerning those Bitcoin.

Fourth, although a Bitcoin transfer transaction does not involve the 'transfer' of a person's interest in the Bitcoin, this does not mean that an interest in Bitcoin is not property. This is because **alienability is not an indispensable attribute of property.**

Fifth, **a person's interest in Bitcoin may be readily distinguished from a mere interest in information**, including electronic data.

[384] - [388], *emphasis added*

In his reasoning, Attiwill J endorsed [Justice Jackman's extra-judicial comments in his speech "Is cryptocurrency property?" earlier this year](#), and cited [a UK draft bill](#) which in turn was based on [a proposal advanced by the UK Law Commission](#), all supporting judicial and legislative efforts to recognise cryptocurrencies (or rights in cryptocurrencies) as property.

Attiwill J's decision departs from the UK Law Commission's position that crypto-assets do not fit neatly into the existing categories of personal property (i.e. are things in possession or things in action), and which recommended the implementation of a third category of personal property called "data objects". Rather, Attiwill J said a person's interest in Bitcoin is

not a chose in possession as it is intangible. It cannot be possessed. It is a chose in action.

This is because

it is well established in Australia that a chose in action comprises a heterogeneous group of rights which have only one common characteristic in that they do not confer the present possession of a tangible object. That is the case with Bitcoin.

On the basis that an interest in Bitcoin is property, Attiwill J went on to find that the 25 Bitcoin transferred to the first defendant were held on trust. In the circumstances, Attiwill J held that Blockchain Tech was entitled to equitable compensation on the basis the defendant had failed to fully account for the dissipated Bitcoin. However, he held that the trustee's obligation had been to dissipate the Bitcoin and account for the value of the same at the price at the time (and not at today's prices).

Meanwhile, Attiwill J rejected the argument that Bitcoin was capable of being held on bailment as it is an intangible form of property.

Attiwill J's judgment represents a significant judicial precedent in relation to Bitcoin and is likely to pave the way for similar recognition of other cryptocurrencies as property. The decision helps to clarify the rights of Bitcoin holders while also having potential implications for third party custodians subject to their applicable terms and conditions. The recognition of Bitcoin as property also expands the range of remedies available to persons seeking to trace and recover misappropriated crypto-assets.

The Victorian Court will now hear from the parties on the precise form of orders. While the case may be appealed, the detailed analysis by Attiwill J and support from overseas authorities are likely to be difficult to overcome.

*Written by Jake Huang, Steven Pettigrove and Michael Bacina*