

Article Information

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Digital Assets as Property: NZ High Court's Cryptopia judgement

The New Zealand High Court has handed down its judgment in relation to the assets of the digital asset exchange Cryptopia.

Justice Gendall [found that](#) users of the exchange are entitled to the digital currency held in Cryptopia accounts, and that those cryptocurrencies should be classed as “*property*” on the basis they were held in separate trust accounts.

Cryptopia

Cryptopia was a popular digital currency exchange in New Zealand which shut down in January 2019, and went into liquidation soon after, following a hack where around NZ\$30 million was stolen. [Grant Thornton](#) was appointed as liquidator, and has been through the arduous process of recovering funds, including preferential payments to creditors, commenting in its [second report](#) that:

No detailed reconciliation process between the customer databases and the crypto-assets held in the wallets has ever been completed

This left an obvious challenge of record keeping, and a controversy arose between creditors, which were collectively owed some NZ\$12.7 million, and the 800,000 odd users with positive balances at the time the exchange was shut down. The classification and treatment of the digital currencies still held by the exchange impact who is first in line to be paid.

If the digital currencies could be classified as “property” within the meaning of New Zealand’s [Companies Act](#), and held on trust for account holders, then those currencies would be distributed between the account holders. Conversely, if the creditors’ argument that the digital currencies were not “property” was correct, the digital currencies would be distributed between both creditors and account holders in accordance with existing insolvency priorities.

In this context, the matter went to the New Zealand High Court, which found, at paragraph 69 of the judgment, per Justice Glendall:

the cryptocurrencies here situated in Cryptopia’s exchange are a **species of intangible personal property and clearly an identifiable thing of value**. Without question they are capable of being the subject matter of a trust.
(emphasis added)

Historically, some Courts have done their utmost to avoid considering the nature of digital currencies technology in judgments. The New Zealand High Court was less reluctant, showing a clear willingness to engage with the underlying technology when determining whether digital currencies can constitute property.

For instance, the Court referred to the seminal work of the [UK Jurisdiction Taskforce Legal Statement on Cryptoassets and Smart Contracts](#), and at paragraph 120, Justice Glendall said:

[digital currencies] obtain their definition as a result of the public key recording the unit of currency. The control and stability necessary to ownership and for creating a market in the coins are provided by the other two features – the private key attached to the corresponding public key and the generation of a fresh private key upon a transfer of the relevant coin.

A number of interesting implications flow from the Court’s categorization of the digital assets on the exchange being held

on trust, including that (at paragraph 192):

an express trust came into existence for every different type of currency here which Cryptopia acquired as a result of a dealing with an accountholder

and that:

Cryptopia essentially fulfilled the role of a bare trustee in relation to the account holders. Cryptopia's trust duties therefore were somewhat confined. [Cryptopia's] principal role was to hold each group of digital assets as trustee for the account holders

Where the liquidators are unable to ascertain the identity of account holders, the digital assets cannot be retained as assets of Cryptopia and must be dealt with in accordance with [section 76 of the Trustee Act 1956](#), which sets out a process for advertisements and distributions of trust assets where a beneficiary cannot be located.

While NZ precedents are not often cited overseas, this is yet another Court led recognition of digital assets as a form of recognizable property, and with digital currency exchanges continuing to grow, applying a consistent treatment and framework for digital assets will only grow in importance.