

CRYPTO AS THINGS IN ACTION: A NORMATIVE AND DOCTRINAL ANALYSIS

This article presents a normative and doctrinal case for recognising cryptocurrencies as property. It proposes a test grounded in the normative ends of property, use and exchange, and argues that cryptocurrencies which fulfil this test deserve legal protection. From a utilitarian perspective, this recognition enhances social utility by encouraging legitimate use and exchange. From a justice theory standpoint, law should protect entitlements acquired through just means. The article further argues that, doctrinally, cryptocurrencies are best classified as things in action rather than a new *tertium quid*. These arguments support the property status of qualifying cryptocurrencies in contemporary law.

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I. Introduction

1 It has been held by courts around the world that cryptocurrencies are property for the purposes of, *inter alia*, injunctions and trusts.¹ On the legislative front, a bill seeking to recognise digital assets including cryptocurrencies as a third category of personal property or *tertium quid* is being debated in the UK Parliament.² However, there remain academic objections to this position. In particular, Professor Stevens demanded a normative justification for affording cryptocurrencies property status and protection.³

2 This article proceeds in four parts. Part II explains the blockchain technology and cryptocurrencies. Part III starts by investigating the normative ends served by property and then proposes a normative test (“Test”) for property based on the advancement of the normative ends. Following this, justifications grounded in utilitarian and justice theories

1 *Tulip Trading Ltd v Van Der Laan* [2023] EWCA Civ 83 at [24]; *Chen v Blockchain Global Ltd* [2022] VSC 92; *Shair.Com Global Digital Services Ltd v Arnold* [2018] BC 311; *Ruscoe v Cryptopia Ltd* [2020] NZHC 728 at [69]; *CLM v CLN* [2022] 5 SLR 273; *Quoine Pte Ltd v B2C2 Ltd* [2020] 2 SLR 20; *ByBit Fintech Ltd v Ho Kai Xin* [2023] 5 SLR 1748; *Re Gatecoin Ltd* [2023] HKCFI 914.

2 Property (Digital Assets etc) Bill [HL], Bill-237 (2024–25) (UK).

3 Robert Stevens, “Crypto Is Not Property” (2023) 139 *Law Quarterly Review* 615 at 627.

will be proposed. Part IV then delves into a doctrinal discussion and argues that cryptocurrencies are things in action. Part V concludes.

3 For terminology, this article refers to things in the world generally as “resources” and those resources over which property rights can be exercised as “objects”. The distinction is that between the pre-legal and the legal. The neutral term “holder” will be used to denote the person exercising the greatest control over a resource. The proposition that something is property means that the resource in it is an object of property rights. Relatedly, “assets” should be distinguished from “property”. The former only means a valuable resource.⁴ The material question is whether cryptocurrencies are property.

II. How cryptocurrencies work

4 An understanding of how cryptocurrencies work is necessary for appreciating the ensuing discussions on whether they are property and, if so, which kind of property. Unlike “digital money” in online banking, which represents debts denominated in fiat currencies owed by banks towards their customers,⁵ cryptocurrencies are ideational currencies used in transactions on their respective blockchains.⁶ Blockchains are decentralised ledgers recording the holding and transactions of cryptocurrencies⁷ and are maintained by a network of computers known as “nodes”.⁸ Holders of cryptocurrencies have a public address and an associated private key.⁹ To transfer certain units of cryptocurrencies to another public address, the transferor needs to use his private key to “sign” the transaction.¹⁰ A node that receives the transaction will verify that the signature was generated by the correct private key and the transferor has

4 Ben McFarlane, *The Structure of Property Law* (Hart Publishing, 2008) at pp 133–136; Peter Birks, “Before We Begin: Five Keys to Land Law” in *Land Law: Themes and Perspectives* (Susan Bright & John Dewar gen eds) (Oxford University Press, 1998) at pp 457–486.

5 *Foley v Hill* (1848) 2 HLC 28; 9 ER 1002.

6 Timothy Chan, “The Nature of Property in Cryptoassets” (2023) 43 *Legal Studies* 480 at 482; Pedro Franco, *Understanding Bitcoin: Cryptography, Engineering and Economics* (Wiley, 2014) at p 15.

7 Timothy Chan, “The Nature of Property in Cryptoassets” (2023) 43 *Legal Studies* 480 at 482; Pedro Franco, *Understanding Bitcoin: Cryptography, Engineering and Economics* (Wiley, 2014) at p 15.

8 Pedro Franco, *Understanding Bitcoin: Cryptography, Engineering and Economics* (Wiley, 2014) at p 110.

9 Pedro Franco, *Understanding Bitcoin: Cryptography, Engineering and Economics* (Wiley, 2014) at p 53.

10 Timothy Chan, “The Nature of Property in Cryptoassets” (2023) 43 *Legal Studies* 482 at 483.

enough cryptocurrencies for the transaction.¹¹ After the transaction is included in a block (in the form of the unique identifier and other material information of the transaction) through a process called “mining” and is verified by the majority of nodes, the block will be subsequently added to the official blockchain confirming the transaction.¹²

III. A normative case for cryptocurrencies as property

A. *The normative ends*

5 In answering the question of what is property, this article proposes first ascertaining the normative ends served by property, in the same logic as defining a chair as something that people sit on. As an owner has the maximum extent of rights available in an object,¹³ we can derive these ends from what an owner can do with his objects and in turn distil what criteria a resource must meet to qualify as an object of property rights.

6 Honoré famously proposed 11 incidents of ownership:

- (a) the right to possess;¹⁴
- (b) the right to use;¹⁵
- (c) the right to manage;¹⁶
- (d) the right to the income;¹⁷
- (e) the right to the capital;¹⁸

11 Pedro Franco, *Understanding Bitcoin: Cryptography, Engineering and Economics* (Wiley, 2014) at p 110.

12 Pedro Franco, *Understanding Bitcoin: Cryptography, Engineering and Economics* (Wiley, 2014) at p 110.

13 Luke Rostill, *Possession, Relative Title, and Ownership in English Law* (Oxford University Press, 2021) at p 171.

14 AM Honoré, “Ownership” in *Oxford Essays in Jurisprudence* (AG Guest gen ed) (Oxford University Press, 1961) at p 113.

15 AM Honoré, “Ownership” in *Oxford Essays in Jurisprudence* (AG Guest gen ed) (Oxford University Press, 1961) at p 116.

16 AM Honoré, “Ownership” in *Oxford Essays in Jurisprudence* (AG Guest gen ed) (Oxford University Press, 1961) at p 116.

17 AM Honoré, “Ownership” in *Oxford Essays in Jurisprudence* (AG Guest gen ed) (Oxford University Press, 1961) at p 117.

18 AM Honoré, “Ownership” in *Oxford Essays in Jurisprudence* (AG Guest gen ed) (Oxford University Press, 1961) at p 118.

- (f) the right to security;¹⁹
- (g) transmissibility;²⁰
- (h) absence of term;²¹
- (i) the prohibition of harmful use;²²
- (j) liability to execution;²³ and
- (k) residuary character.²⁴

7 Based on the foregoing, it is argued that the most important normative end that property serves is use (*ie*, incidents (a), (b), (d) and (e)). Use includes both active engagement with (*eg*, enjoyment of a resource through consumption) and longer-term purposeful dispositions of a resource (*eg*, hoarding gold to drive up the price).²⁵ The factual ability to use resources is the most intuitive interaction we can have with them, without which property rights would be less meaningful and third parties would less likely exchange for the resources.

8 The second most important end is that of exchange. Owners have powers to create derivative rights or interests over their objects, such as licences,²⁶ or to effect outright transfers of their ownership,²⁷ presumably in exchange for value (*ie*, incidents (c) and (g)). This end is secondary to that of use. Owners are only likely to exchange their resources if doing so exceeds the utility in using the resources themselves. The resources (*eg*, money) earned through the exchange will then be used in further exchanges for other resources.

19 AM Honoré, “Ownership” in *Oxford Essays in Jurisprudence* (AG Guest gen ed) (Oxford University Press, 1961) at p 119.

20 AM Honoré, “Ownership” in *Oxford Essays in Jurisprudence* (AG Guest gen ed) (Oxford University Press, 1961) at p 120.

21 AM Honoré, “Ownership” in *Oxford Essays in Jurisprudence* (AG Guest gen ed) (Oxford University Press, 1961) at p 121.

22 AM Honoré, “Ownership” in *Oxford Essays in Jurisprudence* (AG Guest gen ed) (Oxford University Press, 1961) at p 123.

23 AM Honoré, “Ownership” in *Oxford Essays in Jurisprudence* (AG Guest gen ed) (Oxford University Press, 1961) at p 123.

24 AM Honoré, “Ownership” in *Oxford Essays in Jurisprudence* (AG Guest gen ed) (Oxford University Press, 1961) at p 126.

25 James Penner, *The Idea of Property in Law* (Oxford University Press, 2000) at p 70.

26 AM Honoré, “Ownership” in *Oxford Essays in Jurisprudence* (AG Guest gen ed) (Oxford University Press, 1961) at p 116.

27 AM Honoré, “Ownership” in *Oxford Essays in Jurisprudence* (AG Guest gen ed) (Oxford University Press, 1961) at p 118.

B. *The normative test*

(1) *The criteria*

9 A common starting point for establishing whether cryptocurrencies are property is Lord Wilberforce’s formulation in *National Provincial Bank v Ainsworth*:²⁸ “[b]efore a right or an interest can be admitted into the category of property, or of a right affecting property, it must be definable, identifiable by third parties, capable in its nature of assumption by third parties, and have some degree of permanence or stability.”²⁹

10 References to this formulation in answering whether something is property has been criticised. Lord Wilberforce was answering a different question of whether a right is binding on third parties.³⁰ However, valuable insights can be gained from these criteria as they relate to which resources can serve the normative ends of use and exchange. Together with other criteria proposed in the literature, it is argued that a resource must be: (a) definable and relatively permanent; (b) independent of its holder; (c) excludable; and (d) not prohibited by positive laws to qualify as an object of property rights.

11 Definability and relative permanence relate to the resource itself. Definability requires the resource in question to have physical and/or conceptual boundaries, without which we will not know how the resource can be used or exchanged for value. Similarly, only those resources which are relatively permanent can be used or exchanged. It is difficult to imagine, for example, how one can use or exchange a soap bubble.

12 Independence relates to the resource’s relationship with its holder and is derived from Penner’s “separability thesis”. Penner argued that “[o]nly those [resources] in the world which are contingently associated with any particular [holder] may be objects of property.”³¹ In other

28 [1965] AC 1175 (HL). See also *Copytrack Pte Ltd v Wall* [2018] BCSC 1709; *AA v Persons Unknown* [2019] EWHC 3556 (Comm) at [55]–[61]; *Ruscoe v Cryptopia Ltd* Civ 2019-409-000544 [2020] NZHC 728 at [102]–[118]; *Tulip Trading Ltd v Van der Laan* [2023] EWCA Civ 83 at [24]; *Re Gatecoin Ltd* [2023] HKCFI 914 at [46]; *ByBit Fintech Limited v Ho Kai Xin* [2023] 5 SLR 1748 at [33].

29 *National Provincial Bank v Ainsworth* [1965] AC 1175 (HL) at 1247–1248.

30 Robert Stevens, “Crypto is Not Property” (2023) 139 *Law Quarterly Review* 615 at 622; Kelvin F K Low, “Trusts of Cryptoassets” in *Trusts and Private Wealth Management: Developments and Directions* (Richard C Nolan, Man Yip & Tang Hang Wu gen eds) (Cambridge University Press, 2022) at pp 155–157.

31 James Penner, *The Idea of Property in Law* (Oxford University Press, 2000) at p 111.

words, there is nothing special about a holder's relationship with his resource, as the next holder will stand in the same position in relation to it.³² The holder's identity is independent of the resource and *vice versa*.³³ The *raison d'être* of this criterion is to avoid the danger of propertising and hence degrading human rights. To borrow Penner's language, most of "personality-rich" resources like human body parts, the right to reputation, the right to sue for personal injury and labour are not capable of being objects of property rights.³⁴ As most people in modern societies are likely to agree on the protection of human rights, this criterion ensures that objects of property rights are morally neutral and hence freely exchangeable in the market.

13 As Penner persuasively illustrated, the criterion is whether a resource is independent of its holder, not whether it is "capable in its nature of assumption by third parties" as suggested by Lord Wilberforce.³⁵ For example, the ownership of a house which is rendered non-transferable by law does not suddenly become "non-property".³⁶ Penner's contention coheres with the views advocated in this article. A non-transferable house nonetheless is an object of property rights because it can still serve the ends of use, though not exchange.

14 Excludability relates to the relationship between a resource's holder and third parties. Gray defined property as "the power-relation constituted by the [S]tate's endorsement of private claims to regulate the access of strangers to the benefits of particular resources",³⁷ with the touchstone of property being excludability.³⁸ This criterion is essential for the institution of private property. For the holder of a resource to say that the resource is his and not another's, as well as to use and exchange his resources instead of facing violent takeovers,³⁹ it must be factually possible to keep off the resource from external interference.

15 Lastly, non-prohibition by positive laws relates to the relationship between a right and the society at large. Gray emphasised that a resource cannot qualify as an object of property rights if individuals' exercises of

32 James Penner, *The Idea of Property in Law* (Oxford University Press, 2000) at p 112.

33 James Penner, *The Idea of Property in Law* (Oxford University Press, 2000) at p 114; *OBG Ltd v Allen* [2008] 1 AC 1; [2007] UKHL 21 at [309].

34 James Penner, *The Idea of Property in Law* (Oxford University Press, 2000) at p 126.

35 *National Provincial Bank v Ainsworth* [1965] AC 1175 (HL) at 1247–1248.

36 James Penner, *The Idea of Property in Law* (Oxford University Press, 2000) at p 113.

37 Kevin Gray, "Property in Thin Air" (1991) 50 *Cambridge Law Journal* 252 at 294.

38 Kevin Gray, "Property in Thin Air" (1991) 50 *Cambridge Law Journal* 252 at 302.

39 Luke Rostill, *Possession, Relative Title, and Ownership in English Law* (Oxford University Press, 2021) at p 29.

control over such resources are “morally or socially undesirable”.⁴⁰ It is certainly true that certain resources, which fulfil the other criteria and can be used and exchanged, nonetheless cannot be objects of property rights. Readers might recall the longstanding rule that human body parts cannot be objects of property rights.⁴¹ However, one can instinctively think of many morally harmful resources which are likely capable of being objects of property rights. Alcohol, for example, can be bought and sold subject to legal restrictions.⁴² Pornography in general may qualify as “films” and enjoy the protection of copyright.⁴³ French courts, for example, have taken that position.⁴⁴ In contrast, in light of the bans on extreme pornography⁴⁵ and controlled drugs,⁴⁶ these resources cannot be objects of property rights.

16 Therefore, the outer limits of property are not morality, but positive laws considered valid by the relevant jurisdiction’s Hartian rule of recognition.⁴⁷ In morally pluralistic societies, there will likely be conflicting views over whether a resource is moral or not. Positive laws, which are norms created through processes accepted by the general population, offer a middle ground which people in different moral camps can agree to and should define the outer limits of property.

(2) *The non-criteria*

17 The qualities of identifiability by third parties and value are also found in the literature,⁴⁸ which relate to a resource’s relationship with third parties. However, these qualities are not independent criteria but merely features derived from the abovementioned criteria relating to the resource itself, its relationship with its holder and the holder’s relationship with third parties.

18 Identifiability by third parties originates from Lord Wilberforce’s formulation⁴⁹ and should be understood to include not only factual discoverability but also theoretical discoverability. If it only means the

40 Kevin Gray, “Property in Thin Air” (1991) 50 *Cambridge Law Journal* 252 at 294.

41 *Yearworth v North Bristol NHS Trust* [2010] 1 QB 1; [2009] EWCA Civ 37 at [30].

42 Licensing Act 2003 (c 17) (UK) s 14 and Part 7.

43 Copyright, Designs and Patents Act 1988 (c 48) (UK) ss 1(1)(b) and 5B.

44 Kevin Bercimuelle-Chamot, “Copyright in a Film Does Not Depend on its Genre: French Court Also Confirms that Pornography can be Protected” (2017) 12 *Journal of Intellectual Property Law Practice* 461.

45 Criminal Justice and Immigration Act 2008 (c 4) (UK) s 63(1).

46 Misuse of Drugs Act 1971 (c 38) (UK) s 5(1).

47 HLA Hart, *The Concept of Law* (Oxford University Press, 3rd Ed, 2012) at p 100.

48 *National Provincial Bank v Ainsworth* [1965] AC 1175 (HL) at 1248; Roy Goode, “What is Property?” (2023) 139 *Law Quarterly Review* 1 at 4.

49 *National Provincial Bank v Ainsworth* [1965] AC 1175 (HL) at 1248.

former, then wrongdoers can simply convert interests in tangible objects with impunity by making sure that the tangible objects cannot be located by their owners. Identifiability by third parties is the mere resultant feature by virtue of the object being definable, relatively permanent and independent of its holder.

19 Goode suggested that “[s]ubject to statute, [objects of property rights are] anything of realisable commercial value”.⁵⁰ Recent cases on *tertium quid* took into consideration the value of the resources in question before concluding that they are personal property.⁵¹ However, value is not an independent criterion but merely a feature. Value is not intrinsic in the resources themselves, but is instead a creature of market economy, however primitive, reflecting the demand for the resources relative to their supply.⁵² The demand for a resource will only arise if exclusive control can be exercised over it (*ie*, excludable) and if its existence is known to or can be theoretically discovered by interested buyers (*ie*, identifiable by third parties).

20 Nor is *erga omnes* enforceability a criterion, as many things in action, such as debts and company shares, only consist of personal rights but have long been recognised as property. Although the author has argued elsewhere that the law should recognise an *erga omnes* protective right, in the form of the tort of conversion, for things in action, this should not be confused with *erga omnes* substantive rights, which things in action lack.

(3) *The application*

21 To determine whether cryptocurrencies qualify as property, we need to first characterise the resource in them. Various characterisations can be found in the literature. Fox famously characterised the resource in cryptocurrencies as “a string of data ... generated by a transaction on the system”, namely the line of codes consisting of the unique identifier and other material information of each transaction included in a block.⁵³ This characterisation has been convincingly rejected by Chan. The “string of

50 Roy Goode, “What is Property?” (2023) 139 *Law Quarterly Review* 1 at 4.

51 *Attorney-General of Hong Kong v Chan Nai-Keung* [1987] 1 WLR 1339 (PC) at 1342; *In re Celtic Extraction Ltd* [2001] Ch 475 (CA) at [33]; *Swift v Dairywise Farms Ltd* [2000] 1 WLR 1177 (Ch) at 1183–1184; *Armstrong DLW GmbH v Winnington Networks Ltd* [2012] EWHC 10 (Ch) at [49].

52 Richard Lipsey & Alec Chrystal, *Economics* (Oxford University Press, 12th Ed, 2011) at p 35.

53 David Fox, “Cryptocurrencies in the Common Law of Property” in *Cryptocurrencies in Public and Private Law* (David Fox & Sarah Green gen eds) (Oxford University Press, 2019) at para 6.13.

data” is publicly accessible on the blockchain and so is not what holders of resources in cryptocurrencies seek to exclude others from.⁵⁴ Furthermore, the “string of data” remains unchanged in the block even as the same units of cryptocurrencies are spent in subsequent transactions.⁵⁵ The preferred characterisation of the resource in cryptocurrencies is Chan’s “ability to effect a valid blockchain transaction (with the specific assets held at that public address) that will be recognised as valid under the relevant consensus algorithm”.⁵⁶ It is this ability which is used, exchanged and from which their holders sought to exclude others.

22 So conceptualised, cryptocurrencies are capable of being a type of personal property. The resource in each unit of cryptocurrencies (*ie*, a unit of the ability to effect valid blockchain transactions), either in the form of unspent transaction output or account balance,⁵⁷ can be defined and is relatively permanent. Such a unit of transactional ability is undoubtedly independent of its holder. It is also possible to exclude others from the unit of transactional ability by keeping the private key safe and confidential.⁵⁸ Therefore, in the absence of prohibition by positive laws, the resource in cryptocurrencies can serve the normative ends of use and exchange and can therefore qualify as an object of property rights.

C. *The justifications*

23 Professor Stevens agreed that cryptocurrencies are capable of being objects of property rights, but demanded normative justifications for why they should be so recognised.⁵⁹

24 This article provides two normative justifications. From a utilitarian perspective, granting property status to cryptocurrencies that satisfy the Test promotes overall social utility. The Test comprises criteria which advance the normative ends of use and exchange. When legal protection is extended to cryptocurrencies that meet these criteria, it increases user confidence and incentivises greater participation in

54 Timothy Chan, “The Nature of Property in Cryptoassets” (2023) 43 *Legal Studies* 482 at 489.

55 Timothy Chan, “The Nature of Property in Cryptoassets” (2023) 43 *Legal Studies* 482 at 489.

56 Timothy Chan, “The Nature of Property in Cryptoassets” (2023) 43 *Legal Studies* 482 at 485.

57 Timothy Chan, “The Nature of Property in Cryptoassets” (2023) 43 *Legal Studies* 482 at 483–484.

58 Timothy Chan, “The Nature of Property in Cryptoassets” (2023) 43 *Legal Studies* 482 at 483.

59 Robert Stevens, “Crypto is Not Property” (2023) 139 *Law Quarterly Review* 615 at 627.

crypto-related activities. Holders are more likely to use and exchange cryptocurrencies knowing that their rights are legally protected. Scholars have highlighted the potential of cryptocurrencies to enhance financial inclusion, encourage entrepreneurship and reduce frictions in cross-border transactions,⁶⁰ lending support to the utilitarian justification.

25 Secondly, from the perspective of justice theory, particularly the Nozickian entitlement theory, individuals are entitled to holdings acquired through just means, typically through initial acquisition or voluntary transfer.⁶¹ Cryptocurrencies are initially acquired through mining, in which participants are rewarded for contributing computing power or security to the system.⁶² These are forms of productive labour or service recognised and accepted by the network community.⁶³ Subsequent transfers are generally made voluntarily, according to protocols consented to by participants or contract law principles, depending on whether transactions occur on-chain or off-chain. As these holdings originate through just acquisition and transfer, they constitute legitimate entitlements. The law, therefore, ought to protect such entitlements from unjust interference or deprivation. Denying property status to these assets risks undermining the moral claims of individuals who have acquired them through legitimate means.

26 Taken together, these utilitarian and justice-based justifications provide a strong normative foundation for treating qualifying cryptocurrencies as property under the law.

27 It may be objected that not all resources which are capable of being objects of property rights are recognised as property. Liu gave the example of human corpses.⁶⁴ It is submitted that human corpses are not recognised as property because they are prohibited by positive law (“inherent illegality”) and hence do not fulfil the Test. The use and exchange of inherently illegal resources will unlikely enhance social

60 Michael B Greenwald, “How Digital Assets Will Impact Financial Inclusion and Energy Consumption”, *Belfer Center for Science and International Affairs, Harvard Kennedy School* (10 August 2021) <<https://www.belfercenter.org/publication/how-digital-assets-will-impact-financial-inclusion-and-energy-consumption>> (accessed 28 June 2025); David Krause, “Cryptocurrencies: Evaluating Their Economic and Societal Impact” (26 August 2024) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4916410> (accessed 28 June 2025).

61 Robert Nozick, *Anarchy, State, and Utopia* (Basil Blackwell, 1974) at pp 150–153.

62 Satoshi Nakamoto, “Bitcoin: A Peer-to-Peer Electronic Cash System”, *Bitcoin.org* (21 August 2008) <<https://bitcoin.org/bitcoin.pdf>> (accessed 29 June 2025).

63 Satoshi Nakamoto, “Bitcoin: A Peer-to-Peer Electronic Cash System”, *Bitcoin.org* (21 August 2008) <<https://bitcoin.org/bitcoin.pdf>> (accessed 29 June 2025).

64 Hin Liu, “Crypto as Property: A Response to Professor Stevens” (2025) 141(Jul) *Law Quarterly Review* 392 at 402.

utility. Prohibition by positive laws also supplies a strong enough moral reason to not use and exchange such resources.

28 Professor Stevens further objected that cryptocurrencies are widely used in underground criminal activities (“situational illegality”).⁶⁵ However, mere situational illegality does not justify denying cryptocurrencies property status. Other media of exchange, such as fiat currencies and gold, are no less likely to be used in criminal activities.

IV. A doctrinal case for cryptocurrencies as things in action

A. *No need for tertium quid*

29 Cryptocurrencies can be categorised as things in action and it is unnecessary to recognise a *tertium quid*.

30 Common law divides property into real property and personal property,⁶⁶ with the latter further divided into things in possession and things in action.⁶⁷ There have been suggestions in recent English cases that the law now recognises two types of intangible personal property which are not things in action. The first type encompasses Hohfeldian privileges and immunities, often created by statutes, including export quotas,⁶⁸ waste management licences,⁶⁹ milk quotas⁷⁰ and EU carbon emission allowances (“privileges and immunities”).⁷¹ Cryptocurrencies, together with other digital assets, constitute the second type.⁷²

31 The cases do not expressly explain why privileges and immunities are not things in action. One possible guess is that, as things in action are often defined as “personal rights of property which can only be claimed or enforced by action”,⁷³ they might be thought to only include claim-rights but not other Hohfeldian rights. Such a restrictive view cannot be justified. Company shares, for example, give shareholders who are members the power to vote on written resolutions.⁷⁴ As a privilege is the correlative of

65 Robert Stevens, “Crypto is Not Property” (2023) 139 *Law Quarterly Review* 615 at 627.

66 Michael Bridge, *Personal Property Law* (Oxford University Press, 4th Ed, 2015) at para 1.1.1.

67 *Halsbury’s Laws of England* vol 13 (Lexis Nexis, 5th Ed, 2021) at para 1(1).

68 *Attorney-General of Hong Kong v Chan Nai-Keung* [1987] 1 WLR 1339 (PC) at 1342.

69 *In re Celtic Extraction Ltd* [2001] Ch 475 (CA) at [34].

70 *Swift v Dairywise Farms Ltd* [2000] 1 WLR 1177 (Ch) at 1183–1184.

71 *Armstrong DLW GmbH v Winnington Networks Ltd* [2012] EWHC 10 (Ch) at [60].

72 *AA v Persons unknown* [2019] EWHC 3556 (Comm) at [61].

73 *Halsbury’s Laws of England* vol 13 (Lexis Nexis, 5th Ed, 2021) at para 1(1).

74 Companies Act 2006 (c 46) (UK) s 284.

a “no-right”⁷⁵ and an immunity, that of a “no-power”;⁷⁶ there is no logical difficulty in classifying a privilege or immunity as a thing in action. As such, there is no need to classify them as a *tertium quid*. This author echoes Low’s point that things in action as a category are multifarious and seem broad enough to encompass all personal property that is not things in possession.⁷⁷

B. Cryptocurrencies are legal powers

32 The object of cryptocurrencies is a Hohfeldian legal power, which is the volitional control of a fact or group of facts which result in changes in legal relations,⁷⁸ to effect valid transactions on the blockchain. The counterparty to a blockchain transaction will be liable to having a state of affairs altered by the cryptocurrency owner’s exercise of the power.⁷⁹ Chan, however, stressed that the ability to effect valid blockchain transactions is a factual ability, not a legal power,⁸⁰ because “individual node operators do not expect to undertake liability to cryptocurrency holders” as they “may select any transactions ... to be included in a block”.⁸¹ However, it is not the node operators who are liable to the exercise of the legal power, but the transferees, as the node operators are not in a correlative relation with the cryptocurrency owner. As cryptocurrencies are recognised as property and we enter the legal realm, the pre-legal factual ability acquires new significance as a legal power. So understood, there is no logical difficulty in classifying cryptocurrencies as things in action.

75 Wesley Newcomb Hohfeld, “Some Fundamental Legal Conceptions as Applied in Judicial Reasoning” (1913) 23 *Yale Law Journal* 16 at 32.

76 Wesley Newcomb Hohfeld, “Some Fundamental Legal Conceptions as Applied in Judicial Reasoning” (1913) 23 *Yale Law Journal* 16 at 55.

77 Kelvin F K Low, “Trusts of Cryptoassets” in *Trusts and Private Wealth Management: Developments and Directions* (Richard C Nolan, Man Yip & Tang Hang Wu gen eds) (Cambridge University Press, 2022) at pp 57–158; Kelvin F K Low, “Third Things or Sixth Sense? I see Ideational Objects?” in *Private Law and Digital Assets* (Paul Babie & Mark Giancaspro gen eds) (Springer, forthcoming) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4716555> (accessed 13 September 2025). While the author agrees with Low that there is no need or logical space for a third category, Low’s arguments focused on the diversity in the degrees of exigibility of rights currently classified as things in action. This section takes a slightly different approach and focuses on the types of Hohfeldian rights that can be classified as things in action.

78 Wesley Newcomb Hohfeld, “Some Fundamental Legal Conceptions as Applied in Judicial Reasoning” (1913) 23 *Yale Law Journal* 16 at 44.

79 Wesley Newcomb Hohfeld, “Some Fundamental Legal Conceptions as Applied in Judicial Reasoning” (1913) 23 *Yale Law Journal* 16 at 45.

80 Timothy Chan, “The Nature of Property in Cryptoassets” (2023) 43 *Legal Studies* 482 at 486.

81 Timothy Chan, “The Nature of Property in Cryptoassets” (2023) 43 *Legal Studies* 482 at 486.

33 It is often argued that, unlike things in action which are legal constructs,⁸² cryptocurrencies exist independently of legal systems and should be recognised as belonging to the *tertium quid*.⁸³ The assertion that all things in action are purely legal constructs is questionable.⁸⁴ While statutory creatures like company shares and intellectual property may be described as such, certain types of things in action are more accurately described as factual arrangements being given legal effect. It is perfectly imaginable that, in a pre-legal society, an arrangement similar to debts may still exist. A can promise to repay B sums borrowed from B as a moral duty without the promise being legally enforceable. Legal systems do not create the factual arrangement that makes up debts, but only give the factual arrangement legal effect. Cryptocurrencies are also such a factual arrangement. Therefore, the fact that cryptocurrencies exist independently of legal systems does not mean they cannot be things in action.

V. Conclusion

34 This article advances a normative case for recognising cryptocurrencies as property. Once the Test is passed, cryptocurrencies can be said to serve the normative ends of use and exchange, while not prohibited by positive laws. Giving them property status will give their holders assurances and promotes their use and exchange, thereby promoting economic activities and enhancing social utility. From a justice theory perspective, entitlements that are justly acquired can only be deprived or disposed of justly. Hence, the law should prohibit actions which amount to unjust deprivations. It is also argued that, on a doctrinal analysis, cryptocurrencies should be classified as things in action, instead of as a *tertium quid*.

82 United Kingdom, Law Commission, *Digital Assets* (Law Com No 412, 2023) at para 2.49.

83 United Kingdom, Law Commission, *Digital Assets* (Law Com No 412, 2023) at para 2.53; Jiabin Lai, "Possession of Cryptoassets" [2023] *Journal of Business Law* 41 at 50.

84 United Kingdom, Law Commission, *Digital Assets* (Law Com No 412, 2023) at para 2.49.