Precedent and how to read a Singapore judgment

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The doctrine of binding precedent operates vertically. Decisions of the Court of Appeal bind the Appellate Division, the General Division and the State Courts. Decisions of the Appellate Division bind the General Division and the State Courts. The Court of Appeal declared in a Practice Statement of 1994 that it would no longer treat itself as bound by its own earlier decisions or by those of the Privy Council. It has since departed from earlier authority where it thought that adherence would cause injustice or restrict the development of the law.[1] Decisions of courts outside Singapore, including the English courts whose law was received, are persuasive and never binding. In practice they are cited constantly. The ByBit judgment on the proprietary status of USDT drew on the English decision in AA v Persons Unknown and on the Hong Kong decision in Re Gatecoin Ltd, both of which Part J discusses. It also treated the work of the Law Commission of England and Wales on digital assets as material for argument.[2]

A Swiss reader must learn to separate the ratio decidendi, the proposition of law necessary to the decision on the facts, from the obiter dicta, the observations made along the way. Only the ratio binds. A Singapore judgment of the General Division typically runs to fifty or a hundred paragraphs, states the facts at length, sets out the

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parties' submissions, analyses the authorities and then applies the conclusion. The binding proposition may occupy two paragraphs. The civil lawyer's instinct to read a judgment as a short reasoned statement of the rule, as one reads a BGE headnote, leads to error here, because the court often decides narrowly and leaves the wider question open on purpose. The ByBit court held that USDT held in a specific wallet was a thing in action capable of being held on trust. It did not hold that every token is property in every context. A later court faced with a governance token or an NFT will start from the reasoning and work forward.

Notes

1. Practice Statement (Judicial Precedent) of 11 July 1994, Court of Appeal, reported at 1994 2 SLR 689. ↩
2. ByBit Fintech Ltd v Ho Kai Xin, 2023 SGHC 199, at paras 29–36, citing AA v Persons Unknown, 2019 EWHC 3556 (Comm), and Re Gatecoin Ltd, 2023 HKCFI 914. ↩

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