What "thing in action" means for custody, trusts and insolvency

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The classification is a conclusion of law

The practitioner should resist reading *ByBit* as a technical footnote, because the classification has consequences. A thing in action is the archetypal subject matter of an express trust. There is therefore no longer any doubt that a Singapore custodian can declare a trust over a customer's tokens or that a court can impose a constructive trust where tokens are stolen. A thing in action cannot be the object of the tort of conversion, which protects possession of tangible things. A victim whose coins are misappropriated therefore sues in equity for breach of trust or knowing receipt, and at common law for unjust enrichment and, where applicable, deceit. *Janesh* left the conversion point open and no later decision has revisited it.[1] A thing in action also has no physical location, so its situs for conflict-of-laws purposes must be fixed by a rule of attribution, which the Singapore High Court has supplied by reference to the residence of the person who controls the private key (Chapter VIII).

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Control as the organising fact

Across all four decisions the courts have treated control of the private key as the fact that identifies the owner. Lee Seiu Kin J described the owner of an NFT as whoever controls the linked wallet. Chua Lee Ming J in the Three Arrows litigation located the asset where the key-holder resides.[2] This has a double edge, because control is evidence of title, which assists a claimant who holds the key, while control is also what a thief acquires. The law's recognition that the thief now "has" the asset is precisely why the victim needs a proprietary remedy to displace the thief's position. Singapore law, like English law, has never suggested that a thief acquires title. The constructive trust in *ByBit* arose at the moment of the fraud and left the exchange as "the legal and beneficial owner" throughout.[3] The point reinforces the lesson of Part B, Chapter II. For a lawyer, the private key is the only fact that matters. Every custody arrangement must be analysed by asking who holds it.

Practice note

A client who holds crypto assets through a Singapore platform can now obtain from the courts the full range of proprietary remedies, but only if the facts support a proprietary claim. Three steps protect that position before any dispute arises. - Read the platform's terms to see whether they declare a trust, acknowledge that the customer remains beneficial owner, or state that the platform owns the coins and owes only a contractual obligation to return equivalent value. - Keep a dated record of deposits and of the platform's wallet addresses, because tracing begins with the claimant's own evidence. - Where sums are large, prefer a licensed custodian subject to the MAS segregation and trust requirements described in Part K, Chapter II. Those rules convert the private-law question into a regulatory obligation that the custodian must document and that an auditor must test.

Notes

1. *Janesh* [2022] SGHC 264 at [77]–[78] (claims in conversion and contract as grounds for a proprietary injunction left undecided). The English position

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that conversion does not lie for intangibles is *OBG Ltd v Allan* [2007] UKHL 21. ↩

2. *Janesh* [2022] SGHC 264 at [70]. *Cheong Jun Yoong v Three Arrows Capital Ltd and others* [2024] SGHC 21 at [59]–[63] (Chua Lee Ming J, 26 January 2024). ↩

3. *ByBit* [2023] SGHC 199 at [44]. ↩

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