# Why the property question matters

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Whether a crypto asset is property is the question on which every other private-law consequence depends. If a token is property, its owner can obtain a proprietary injunction freezing it in the hands of a thief. The owner can trace its proceeds into other assets, claim it back from the insolvent estate of a custodian who held it on trust, and leave it by will. If a token is merely information or a contractual expectation, the owner is left with personal claims in contract, tort or unjust enrichment. Such claims rank alongside those of every other unsecured creditor and die with the solvency of the defendant. The practical stakes are highest in the two situations that generate most crypto litigation. In theft or fraud, the victim needs a proprietary claim to reach the asset wherever it has gone. In platform insolvency, the customer needs a proprietary claim to stand outside the pari passu distribution.

English private law, which Singapore inherited, divides personal property into two classes. Things in possession are tangible objects that can be physically held, such as gold bars or a hardware wallet. Things in action are rights enforceable only by legal action, such as a debt, a share or a contractual claim. Fry LJ said in *Colonial Bank v Whinney* that "all personal things are either in possession or action" and that the law knows no tertium quid between the two. His dictum has been quoted in every

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common-law judgment on crypto assets since 2019.[1] A crypto asset is neither in any obvious sense, because it cannot be physically possessed and is not a right against any identifiable person, since the holder of a bitcoin has no claim against anyone to deliver anything. The question for the courts has therefore been whether the categories stretch or whether a third one is needed.

Singapore's answer, worked out over four decisions between 2020 and 2023, is that crypto assets are property and that they fall within the category of things in action, understood as a residual class that is "broad, flexible, and not closed".[2] This chapter traces how that answer was reached, how firm it is, and what it means for custody, trusts and insolvency.

## Notes

1. *Colonial Bank v Whinney* (1885) 30 Ch D 261 at 285 (Fry LJ), affirmed (1886) 11 App Cas 426 (HL). The dictum is quoted in *ByBit Fintech Ltd v Ho Kai Xin* [2023] SGHC 199 at [35]. ↩
2. *ByBit Fintech Ltd v Ho Kai Xin* [2023] SGHC 199 at [35]–[36] (Philip Jeyaretnam J). ↩

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