Question

Can and should cryptocurrencies be treated in the law as just another asset or does the law need to craft an entirely new set of rules for them. It is essential to give examples in support of your answer. You can choose which legal system you deal with; you may want to look at more than one jurisdiction, on a comparative basis, although that is not necessary. So far as substantive law is concerned, the SICC case of *Quoine Pte Ltd v B2C2 Ltd* [2020] SGCA(I) 02 is the *locus classicus*, although there have been other interesting Singapore cases. Pure theoretical discussion is unlikely to be sufficient.

Introduction

1 This essay argues that the law can and should *generally* treat cryptocurrencies as conventional assets[1] within existing legal frameworks. Nevertheless, certain distinctive features of cryptoassets warrant targeted *doctrinal* refinements and the development of complementary *extra-legal* infrastructure, ensuring that legal adaptations remain effective and commercially viable.

2 Pragmatic considerations favour targeted adjustments rather than wholesale reform. Existing legal doctrines already provide a stable and predictable foundation for the legal treatment of cryptocurrencies, as evidenced by leading cases such as *Quoine*[2] and *AA v Persons Unknown*.[3] While gaps and uncertainties undoubtedly remain, these can be

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1 For present purposes, no sharp distinction is drawn between "asset" and "property". Although the terms may carry different connotations in some contexts, "asset" is often used more loosely to refer to things of value that can be owned. For example, *Black's Law Dictionary* (12th Ed, 2024) defines "asset" as: "An item that is owned and has value"; "The entries on a balance sheet showing the items of property owned, including cash, inventory, equipment, real estate, accounts receivable, and goodwill"; or "All the property of a person (esp. a bankrupt or deceased person) available for paying debts or for distribution." Also see *Oxford Dictionary of Law* (10th Ed, 2022).

2 *Quoine Pte Ltd v B2C2 Ltd* [2020] 2 SLR 20.

3 *AA v Persons Unknown* [2020] 4 WLR 35.

addressed discretely through careful refinements. In contrast, an entirely new set of crypto-specific rules carries significant risk: it could create unintended mismatches with established principles, may (in any event) fail to anticipate practical issues, and risks doctrinal confusion and commercial instability.

3 Cryptocurrencies, while novel, are not beyond the reach of existing legal frameworks. Established common law doctrines have already shown significant adaptability, accommodating cryptoassets' particular characteristics, as demonstrated by recent judicial decisions (*eg*, *ByBit*).[4] Thus, the common law offers a sufficiently flexible and secure foundation, subject to precise and deliberate adjustments.

4 This argument develops in two parts.

(a) Part I explores how existing law *can effectively* assimilate cryptocurrencies, critically examining key doctrinal areas requiring refinement to ensure coherence, clarity, and practical stability.

(b) Part II considers whether the law *should* assimilate cryptocurrencies, critically evaluating the benefits and challenges of assimilation. It emphasises that the "should" question should be answered in the affirmative but that answer must be mindful of the parallel developments in extra-legal infrastructure, such as regulatory clarity, technical standardisation, and international cooperation that need to be made in support of doctrinal developments.

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4 *ByBit Fintech Ltd v Ho Kai Xin* [2023] 5 SLR 1748.

The conclusion draws these threads together, affirming that existing legal frameworks remain largely adequate, subject to carefully targeted doctrinal adjustments and robust extra-legal developments.

I. Can the law *effectively* assimilate cryptocurrencies?

A. Conceptual effectiveness: Cryptocurrencies as what kind of property?

5 To effectively assimilate cryptocurrencies into existing legal frameworks, it is first necessary to understand their conceptual fit within traditional property categories. At common law, property is divided into choses in possession (being tangible objects capable of physical possession) and choses in action (intangible rights enforceable through legal action).[5] Cryptocurrencies, however, do not comfortably fit within these traditional categories.

6 Clearly, cryptocurrencies cannot be classified as choses in possession, as they are intangible digital entries stored on decentralised ledgers without any physical embodiment. Yet, classifying cryptoassets as choses in action also poses significant conceptual difficulties. Traditionally, choses in action represent enforceable obligations against specific counterparties, arising from legal rights or duties. Cryptocurrencies, operating *via* decentralised blockchain networks, lack this critical feature of enforceability against an identifiable counterparty.[6] Therefore, the absence of this enforceable Hohfeldian claim-right fundamentally undermines their straightforward classification as choses in action, at least according to traditional understandings.[7]

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5 Michael Bridge, *et al*, *The Law of Personal Property* (Sweet & Maxwell, 3rd Ed, 2022), [4-002] *et seq*.

6 *Torkington v Magee* [1902] 2 KB 427, 430.

7 Robert Stevens, "Crypto is not Property" (2023) 139(Oct) *LQR* 615, 618–621.

7 Scholarly responses have proposed two divergent paths to address this doctrinal impasse. Low and Sheehan argue that common law possesses sufficient flexibility to accommodate cryptoassets within a broadened conception of choses in action. Low, for instance, contends that the rigid traditional criteria (such as those set out by Lord Wilberforce in *Ainsworth*)[8] are overly restrictive and inappropriate for modern intangible assets. Instead, Low advocates for an emphasis on exclusivity of control (cryptographic control), rather than enforceability, as the essential determinant of proprietary status for cryptoassets.[9] Sheehan similarly suggests that introducing a novel third category risks unnecessary doctrinal fragmentation. He maintains that traditional categories, properly reinterpreted, offer sufficient flexibility to integrate cryptoassets without conceptual incoherence or commercial disruption.[10]

8 In contrast, Petch, supported by the UK Jurisdiction Taskforce's influential *Legal Statement on Cryptoassets and Smart Contracts* and the proposed *Property (Digital Assets etc) Bill*, advocates for a novel *tertium quid* category of intangible property specifically recognising cryptoassets. For Petch, cryptoassets are characterised not by traditional enforceability against counterparties, but by their distinctive cryptographic exclusivity, decentralised nature, and transactional capabilities. He argues that existing classifications cannot adequately capture these unique characteristics, thus necessitating explicit recognition of cryptoassets as a distinct category of property.[11]

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8 *National Provincial Bank v Ainsworth* [1965] 1 AC 1175 at 1247–1248.

9 Kelvin FK Low, "Trusts of Cryptoassets" (2021) 34(4) *TLI* 191, 195–196.

10 Duncan Sheehan, "Third Things, Tracing and Crypto-Tokens" (2025) 141(Jul) *LQR* 346, 348.

11 Tolek Petch, "Crypto is Property" (Parts 1 to 4) (2025) 40 *JIBLR* 93, 131, 169, and 210.

9 Judicial support exists for both scholarly positions. For instance, the Singapore High Court decision in *ByBit* supports treating cryptocurrencies within traditional equitable and proprietary frameworks (such as choses in action), explicitly affirming that established doctrines provide sufficient flexibility to address cryptoasset disputes without unnecessary conceptual complications.[12] Conversely, English courts, exemplified in *D'Aloia v Persons Unknown*, have signalled openness[13] to treating cryptoassets as a distinctive third form of property due to their unique technological and operational characteristics.[14] This judicial divergence underscores both the conceptual difficulties inherent in cryptoassets' proprietary categorisation and the practical importance of carefully targeted doctrinal refinements.

10 Yet, regardless of whether one supports a broader interpretation of existing property categories or the creation of a novel third category, the common thread is the need for cautious, incremental legal adaptation. The complexity and conceptual novelty of cryptocurrencies caution strongly against wholesale reform, given the risks of doctrinal confusion and unintended practical consequences. Instead, incremental doctrinal refinements, guided by pragmatic judicial responses such as those observed in *Quoine*,[15] offer the most coherent, predictable, and commercially viable approach.

B. Practical effectiveness

11 Even if cryptocurrencies can conceptually be assimilated into traditional property categories, important practical challenges remain. As Low observes, "[c]lassification as

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12 *ByBit* (n 4), [58]–[63].

13 Though the court's view was influenced by that of the UK Jurisdiction Taskforce.

14 *D'Aloia v Persons Unknown* [2025] 1 WLR 821, [153]–[173].

15 See, *eg*, [78]–[128] of *Quoine* (n 2) on unilateral mistake.

property tells us nothing about the content of the right".[16] In particular, practical issues related to tracing, priority disputes, possession, and cross-border enforceability require targeted doctrinal refinements. By critically evaluating recent judicial approaches in the UK (*eg*, *D'Aloia*) and Singapore (*eg*, *ByBit*) alongside key scholarly debates, the following analysis illustrates that while existing common law doctrines have proved adaptable, precise and targeted refinements remain essential to ensure clarity, coherence, and effectiveness.

(1) Priority and tracing: The need for doctrinal precision

12 A major practical difficulty in assimilating cryptocurrencies within existing property law arises in the determination of tracing and priority, particularly where cryptoassets are commingled. *D'Aloia* clearly illustrates these difficulties. There, the English High Court permitted the claimant to adopt blockchain-specific tracing methods rather than traditional doctrines (such as "first-in, first-out" ("FIFO")), acknowledging cryptoassets' unique technological features, notably their cryptographically distinguishable identities within a mixed fund.[17] This novel judicial approach highlights both the adaptability and the tensions inherent in applying traditional tracing rules to cryptoassets.

13 Sheehan, however, provides a cogent critique of this blockchain-specific tracing approach. He persuasively argues that the practical commercial reality of cryptoassets — despite their technical uniqueness — is fundamentally fungible, analogous to other intangibles like company shares or money. Accordingly, applying overly flexible tracing methods risks undermining legal certainty, commercial predictability, and fairness among

16 Low (n 9), 195.

17 *D'Aloia* (n 14), [208]–[221].

claimants. Indeed, Sheehan asserts that the fungibility of crypto-tokens requires adherence to established tracing doctrines (*eg*, FIFO or *pro rata*), particularly given the significant evidential and methodological uncertainties of blockchain analytics.[18]

14 Sheehan further argues that the *D'Aloia* approach, if widely adopted, might inadvertently complicate priority disputes. By granting claimants selective assertions over cryptographically "specific" tokens, it could unfairly circumvent established priority and loss-allocation principles, potentially undermining the equitable treatment of innocent third-party recipients. Consequently, the practical utility of traditional tracing doctrines could be significantly diluted, creating substantial commercial and legal uncertainty.[19]

15 This debate between *D'Aloia* and Sheehan underscores the necessity of precisely targeted doctrinal refinements. The common law has indeed demonstrated flexibility in adapting tracing principles to modern technological contexts — as illustrated in *ByBit*, where the Singapore High Court applied equitable tracing principles pragmatically to misappropriated cryptoassets.[20] However, caution remains essential. Doctrinal adaptations must not sacrifice commercial stability, fairness, or clarity. Instead, careful and deliberate refinements should respect cryptoassets' functional fungibility while aligning closely with commercial practice and well-established equitable principles. Such measured refinement ensures that the common law remains responsive to cryptocurrencies' distinctive characteristics without creating unnecessary doctrinal confusion or undermining commercial certainty.

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18 Sheehan (n 10), 348–349.

19 *Ibid*, 350–351.

20 *ByBit* (n 4), [42]–[45].

(2) Possession: Refining the conceptual fit for cryptoassets

16 Another significant doctrinal challenge arises in determining whether existing possessory principles at common law can accommodate cryptocurrencies. Possessory doctrines have historically relied heavily upon the physical tangibility of property. As confirmed authoritatively by the House of Lords in *OBG v Allan*, intangible assets traditionally cannot constitute choses in possession, thus restricting cryptoassets' straightforward assimilation within existing possessory frameworks.[21] This limitation appears especially problematic given that cryptoassets exist exclusively as data entries on decentralised ledgers, lacking physical embodiment entirely.

17 However, recent scholarship compellingly challenges this restrictive traditional view. For instance, Lai argues for recognising "cryptographic control" — exclusive control through private cryptographic keys — as functionally equivalent to physical possession. According to Lai, cryptographic control embodies the essential possessory elements: factual exclusivity and an intention to possess. In practical terms, losing cryptographic keys is effectively analogous to losing physical control of tangible property, thus potentially justifying doctrinal adjustments to traditional possessory principles.[22]

18 Further supporting Lai's argument, Ramsden persuasively critiques the traditional limitation reaffirmed by *OBG v Allan*, highlighting its impracticality and potential injustice. He identifies the conceptual incongruity in refusing possessory protection to cryptocurrencies despite their commercial value, exclusivity, and functional similarity to traditional property. He calls explicitly for legislative or judicial refinements to recognise

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21 *OBG Ltd v Allan* [2008] 1 AC 1, [220] *et seq* (*per* Lord Nicholls).

22 Jiabin Lai, "Possession of Cryptoassets" [2023] *JBL* 41, 48 *et seq*.

digital control as possessory, given the practical inadequacies of excluding cryptoassets from possessory remedies such as conversion. He cautions that without recognition of cryptographic control, cryptoasset holders remain inadequately protected against unauthorised interference.[23]

19 These scholarly insights collectively highlight a critical point: if the law treats cryptocurrencies simply as "just another" intangible asset, it risks overlooking their distinctive characteristics and missing necessary consequential adaptations. Although current possessory doctrines, framed around tangible property, do not readily accommodate cryptoassets (or, indeed, any intangible asset), they remain capable of precise and targeted refinement. Recognising cryptographic control explicitly as analogous to traditional physical possession would align the law with commercial realities, enhancing legal coherence and market certainty. In doing so, cryptocurrencies would not merely be assimilated into existing frameworks; rather, their incorporation could meaningfully influence and modernise the very contours of property law.

(3) Cross-border enforceability: Challenges of lex situs and lex contractus

20 Even if cryptocurrencies are effectively assimilated into existing doctrinal frameworks, substantial practical difficulties arise in cross-border enforceability due to their inherently decentralised, pseudonymous, and global nature. Traditional conflict-of-law rules, particularly *lex situs* and *lex contractus*, encounter significant practical and conceptual challenges when applied to cryptoassets, which exist solely as decentralised ledger entries without any clear geographical *locus* or fixed jurisdictional anchor.

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[23] James Ramsden, "Possessable or Non-Possessable? *OBG v Allan* and the Future of Intangibles" (2021) 36(9) *JIB&FL* 626.

21 At the heart of these difficulties lies the inadequacy of traditional *lex situs* analysis when applied to cryptocurrencies. Ramsden critically observes that traditional property conflicts rules, rooted in tangible property or location-based principles, are poorly equipped to determine the *situs* of cryptoassets.[24] Given that cryptoassets are intangible, digital ledger entries simultaneously recorded on decentralised global networks, attempts to apply traditional *situs* principles frequently yield arbitrary or artificial results. For instance, tying *situs* to the location of private cryptographic keys or wallet infrastructure proves impractical, given that such elements are inherently mobile, globally distributed, and frequently pseudonymous. This was vividly demonstrated in the English case of *Osbourne v Persons Unknown*,[25] where NFTs unlawfully transferred from a wallet in England were subsequently traced through multiple international wallets, illustrating the futility of attempting to locate digital assets by territorial connections. Traditional connecting factors under *lex contractus* — such as the place of performance or contracting — similarly fail to provide reliable guidance, due to the cross-border, pseudonymous, and decentralised nature of cryptoasset transactions.

22 These inadequacies stand to result in inconsistent judicial approaches across jurisdictions. There is thus a need for coherent international cooperation and clear statutory guidance to enhance jurisdictional certainty and streamline enforcement processes. International agreements akin to the Hague Securities Convention could provide a practical blueprint, clarifying jurisdictional rules and facilitating cross-border recognition of judgments. Indeed, without such efforts, cryptocurrency cross-border issues are likely to remain uncertain, potentially costly, and procedural complex.

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24 Ramsden (n 23).

25 *Osbourne v Persons Unknown* [2023] EWHC 39 (KB).

II. Should the law assimilate cryptocurrencies and, if so, *how* should it?

A. The desirability of assimilation

23 The desirability of assimilating cryptocurrencies within existing legal frameworks is substantial. At the heart of this desirability lies a practical reality: cryptocurrencies are already widely recognised and traded as valuable, rivalrous economic resources. Recognising them as objects of proprietary rights promotes transactional clarity and commercial stability, critical conditions for effective market regulation and economic efficiency. Conversely, excluding them from recognition not only leaves investors vulnerable to fraud and misappropriation but increases systemic transactional risks.[26]

24 Held bolsters this point by highlighting that comparative law and international standards, such as the UNIDROIT Principles on Digital Assets, increasingly support recognising cryptoassets as distinct but legitimate objects of property rights. Such recognition, she argues, reduces cross-border legal uncertainty, facilitating greater international coherence and regulatory predictability, thereby significantly enhancing transactional efficiency across jurisdictions. She cautions, however, that assimilation within existing frameworks must be sensitive to underlying differences between civil and common law traditions. While the civil law traditionally emphasises an "object-based" taxonomy, the common law prioritises enforceability and rights-based classifications. A careful harmonisation that respects these differences is critical, ensuring effective doctrinal integration without conceptual confusion or commercial instability.[27]

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[26] Caroline Jackson and Alex Potts, "If the Law Supposes that Crypto Cannot be Property, then the Law is an Ass" (2024) 39(3) *JIB&FL* 183, 184–185.

[27] Amy Held, "(Digital) Things as Objects of Property Rights: What Can Crypto Learn from Comparative Law" (2025) 45(1) *OJLS* 217, 218.

25 All that being said, the desirability of assimilation must not blind us to the varied nature of cryptoassets. The legal status of specific cryptoassets must be judged individually by reference to their operational and transactional characteristics. For example, certain less decentralised tokens, which provide their developers extensive unilateral control, may be insufficiently stable or rivalrous to justify full proprietary recognition. In contrast, genuinely decentralised and stable assets such as Bitcoin or Ethereum satisfy clear functional criteria for property, strongly justifying their assimilation within proprietary frameworks. This nuanced, case-by-case approach ensures doctrinal coherence and practical relevance.

26 Thus, carefully targeted doctrinal adaptations within existing frameworks, rather than wholesale legal reform, represent the most desirable and practically viable approach to assimilating cryptocurrencies. This approach maintains doctrinal coherence and minimises commercial risks in the interim, whilst still effectively responding to the specific, conceptual, practical, and international challenges posed by cryptocurrencies, thereby balancing the clarity, predictability, and stability crucial for market confidence and cross-border commercial interactions, without compromising the need for the entire system to be undergirded by sound principle and reason.

B. The "how should" question: Extra-legal necessities of assimilation

27 Effective assimilation of cryptocurrencies into existing legal frameworks requires more than doctrinal refinement alone. Given the distinctively decentralised, pseudonymous, and transnational nature of cryptoassets, purely legal solutions — though essential — are insufficient on their own to fully address their unique practical challenges. Consequently, doctrinal adjustments must be accompanied by parallel developments in extra-

legal infrastructure, such as regulatory clarity, technical standardisation, and robust international cooperation.

28 The fundamental challenge arises from cryptocurrencies' reliance on decentralised ledger technology, cryptographic keys, and consensus mechanisms rather than traditional intermediaries such as banks and financial institutions. As Sheehan notes, cryptoassets exist independently of legal systems and intermediaries, rendering traditional methods of legal and regulatory oversight ineffective. This absence of a central accountable entity means that even robust doctrinal adaptations might fail without significant parallel development in regulatory, technical, and international enforcement infrastructures to provide practical support.[28]

29 Specifically, three areas of extra-legal infrastructure are critically needed to complement doctrinal adjustments: regulatory clarity, technical standardisation, and international cooperation.

(a) Firstly, clear regulatory frameworks, particularly around custody and ownership, are indispensable. Current market practices around crypto custody remain uncertain, with significant ambiguity regarding custodial responsibilities, proprietary rights, and liabilities in cases of insolvency or fraud.[29] Clear regulatory standards defining custodial responsibilities and fiduciary obligations can substantially reduce operational uncertainties. As illustrated by the insolvency of platforms like Cryptopia, clear regulatory guidance on asset segregation and custodial liabilities is crucial to protecting users and maintaining market confidence.

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28 Duncan Sheehan, "Digital Assets, Blockchains and Relativity of Title" [2024] *JBL* 78, 78–79.

29 Jiabin Lai, "Legal Transfer of Cryptoassets" [2024] *Conv* 292, *eg*, 301–302.

(b) Second, technical standardisation, especially around blockchain analytics and tracing methodologies, is vital to support doctrinal adaptations, particularly those relating to tracing and recovery. Chan and Low point out that while blockchain analytics have become essential tools for fraud detection and asset recovery, significant controversies remain around their reliability, evidential admissibility, and methodological consistency.[30] Standardising and certifying blockchain analytics methods would mitigate these concerns, facilitating judicial acceptance of tracing evidence and thereby enhancing practical enforcement. The development and acceptance of robust analytical standards, akin to those employed by leading analytics providers like Chainalysis and Elliptic, would improve consistency and reliability in judicial processes, thereby directly complementing refined equitable tracing doctrines.

(c) Third, as previously discussed, robust international cooperation is essential to address cross-border enforceability issues inherent in cryptoassets. Traditional conflict-of-law rules, such as *lex situs* and *lex contractus*, encounter significant conceptual and practical difficulties when applied to cryptoassets, which inherently lack a fixed geographical *locus*. To address these challenges, international regulatory initiatives such as the Financial Action Task Force guidelines and the UNIDROIT Principles on Digital Assets offer valuable frameworks for enhancing cross-border regulatory consistency and enforcement predictability. Such international cooperation is vital for reducing jurisdictional risks, transactional uncertainties, and the substantial procedural complexities highlighted earlier.

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[30] Timothy Chan and Kelvin FK Low, "Post-Scam Crypto Recovery: Final Clarity or Deceptive Simplicity" (2023) 139(Jul) *LQR* 379, 380–381.

30 In short, while doctrinal adaptation is essential, its effectiveness is fundamentally dependent on parallel developments in extra-legal infrastructure. Such developments are not merely complementary but indispensable, addressing practical challenges that doctrinal adaptations alone cannot fully resolve. Together, these elements ensure the law's responsiveness to cryptoassets' distinctive practical realities, securing market confidence, operational effectiveness, and cross-border legal certainty.

Conclusion

31 This essay has argued that cryptocurrencies can and should generally be treated as conventional assets within existing legal frameworks, rather than requiring an entirely new set of rules. Judicial decisions such as *Quoine* and *AA v Persons Unknown* are some of the first to illustrate how existing common law doctrines can be adapted effectively and pragmatically to address cryptoassets' distinctive features.

32 However, as shown, such assimilation cannot be effective without targeted conceptual and doctrinal refinements. Even then, effective assimilation requires more than just adjustments. Parallel developments in extra-legal infrastructure, such as regulatory clarity on custody, technical standardisation of blockchain analytics, and strengthened international cooperation, are critical. These complementary measures ensure practical enforceability, commercial stability, and cross-border legal coherence — conditions essential for maintaining market confidence and transactional predictability.

33 Thus, the answer to whether the law can and should treat cryptocurrencies as conventional assets is firmly in the affirmative, provided there are targeted doctrinal refinements coupled with robust extra-legal support. This balanced and incremental approach,

explicitly tied back to the distinctive nature of cryptoassets, represents the most coherent, commercially viable, and internationally consistent pathway forward, effectively addressing the practical realities and ensuring legal adaptations remain both effective and commercially sustainable.

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