A Reading of the High Court of Australia Transcript on the Nature of Cryptocurrency in Poulton v Conrad: Judicial Considerations of Whether a Bitcoin Holding Can Be Possessed and Protected by the Torts of Conversion and Detinue

August 27, 2026

A Reading of the High Court of Australia Transcript on the Nature of Cryptocurrency in *Poulton v Conrad*: Judicial Considerations of Whether a Bitcoin Holding Can Be Possessed and Protected by the Torts of Conversion and Detinue

In August 2026, the High Court of Australia heard oral arguments in *Poulton v Conrad* [2026] HCATrans 44, addressing a foundational question in digital asset law: can a Bitcoin holding be possessed at common law, and therefore be protected by the traditional torts of conversion and detinue? The transcript provides an extensive view of how an apex court assesses the integration of decentralized digital assets into established property paradigms. The inquiries raised by the Justices highlight the mechanical and conceptual difficulties of applying historic torts to modern technology. These deliberations hold significant implications for the cryptocurrency industry across common law jurisdictions, including the United Kingdom (UK), the Dubai International Financial Centre (DIFC), the Abu Dhabi Global Market (ADGM), Hong Kong, and the British Virgin Islands (BVI).

Identifying the “Thing”

A threshold issue for the Court was defining the exact subject matter of the dispute. To establish the torts of conversion or detinue, a claimant must prove interference with a possessory right over a specific, identifiable “thing.”

Justice Gordon repeatedly sought clarity on this classification, asking counsel to isolate the exact asset in question: “Are we talking about the private key? Are we talking about the private key with the public key? Are we talking about the private key, plus the private key, plus something else?” She emphasized that “when we are talking about a legal relation, it is identification of the thing, whatever it is, between the two parties.”

The respondent submitted that the relevant object is the Unspent Transaction Output (UTXO), the record of value on the public ledger. Justice Gleeson summarized the structural necessity of this identification: “But you need ‘thing’ in order to get possession, and you need possession in order to get the tort.”

However, the appellant characterized Bitcoin as an “ideational asset,” asserting that “bitcoin is just a string of data. There is no coin, nothing tangible. There is nothing backing bitcoin; there is no promise, no resource,” and argued that “information is not property, no matter how valuable or useful.”

Justice Edelman expressed skepticism toward utilizing broad labels to solve specific legal questions. “I mean, I find this going round in circles with definitions of ‘property’ which apply in different ways, with different elements, in different contexts, to be incredibly unhelpful,” he remarked. Instead, he tested a functional definition, asking whether there is anything wrong with “describing bitcoin as a liberty to alter the ledger?”

The Absence of a Counterparty and the Rule of Law

A crucial distinction between Bitcoin and traditional financial intangibles, such as bank accounts, is the absence of a centralized debtor. Justice Beech-Jones explored this distinction by comparing Bitcoin to a physical commodity rather than a contractual right.

Responding to analogies drawn between Bitcoin and fiat currency deposited in a bank, Justice Beech-Jones observed: “when we talk about a chose in action in the form of a debt in a bank, the thing is the debt owed by the bank to the individual. So, there is effectively a counterparty.” He contrasted this with physical property: “When you own a diamond, there is no counterparty – it is the world. There is no counterparty obligation.” Applying this to the crypto asset, he asked, “Are you not saying, well, the relevant analogy is bitcoin is not like a chose in action in that sense, because it is not a cause of action or a debt or a contractual right or anything of that kind against, say, the bank. It exists against the world – on one view, either against the world or against no one.”

This architecture, an asset with no counterparty obligations maintained by a consensus protocol, prompted Justice Steward to question the legal enforceability of the network. He asked whether Bitcoin is simply “an unenforceable congeries of rights” and whether the appellant’s argument meant that “bitcoin sits outside an ascertainable system of the rule of law – it is almost anarchial – and it cannot give rise to something that we can recognise at law?”

Systemic Legal Consequences and “The Gap”

The Justices critically assessed whether it was necessary to extend conversion and detinue, which are historically chattel torts, to intangible assets. Justice Edelman warned of the downstream effects on other legal domains, asking: “if one were to change the torts of conversion and detinue and extend them beyond tangible things or assets, then what would that do to other areas of the law?”

Both Justice Edelman and Justice Gordon interrogated whether there was a genuine legal vacuum requiring this extension. Justice Edelman pressed the respondent: “What is the gap? What is the factual scenario where an interference with somebody’s so-called bitcoin – to use the term compendiously – would not give rise to an adequate legal remedy?” Justice Gordon similarly asked, “are there other remedies available that would give you the same relief?”, noting that claims based on agency, breach of confidence, or contract might already provide adequate recourse without altering personal property torts.

Normative Choices and Third-Party Risks

Chief Justice Gageler framed the dispute as a policy decision for the common law. Noting that property is universally described as a legal relationship with a thing, he stated: “The question here is at the level of: should a legal relationship be recognised?” He subsequently outlined the challenge: “The question we have to address is whether the existing principles need to be adapted to meet it.”

A major consequence of that normative choice involves third-party rights. The tort of conversion operates on strict liability. Gageler CJ noted the historical treatment of physical money: “If you steal money from me – if you take money out of my pocket, I can sue you for conversion, can I not?… If you then use the money to buy something from an innocent third party, I cannot sue the innocent third party who then holds the coin.” He observed that “it is the negotiability of the property that allows for the innocent third party to have a defence."

He then pressed the respondent on whether Bitcoin possesses this attribute, asking, "Is bitcoin a currency? Is it negotiable?" If a court allows conversion claims for Bitcoin but does not extend a good-faith purchaser defense, an innocent third party who receives stolen Bitcoin could be strictly liable to the original owner.

Global Implications for Common Law Jurisdictions

The judicial debate in *Poulton v Conrad* is highly significant for the global cryptocurrency industry, particularly in offshore and regional financial hubs that rely on the common law. Jurisdictions such as the UK, DIFC, ADGM, Hong Kong, and the BVI frequently look to apex courts in Australia and England to clarify the treatment of novel commercial assets.

If the High Court of Australia rules that a Bitcoin holding is capable of possession and subject to conversion, it provides plaintiffs with a strict-liability proprietary remedy. Conversion does not require a breach of contract or fiduciary duty; it is an assertion of superior title against anyone who interferes with the asset. For digital asset exchanges, liquidators, and victims of cryptocurrency theft in hubs like Dubai, Hong Kong or the BVI, this would streamline asset recovery, establishing a direct claim over stolen digital assets and circumventing complex equitable tracing rules.

Conversely, if the Court determines that extending possessory torts to intangibles disrupts established law and that plaintiffs should rely on equitable and contractual remedies, industry participants will need to structure their custodial and trading agreements with greater reliance on express trusts and strictly drafted indemnities. Furthermore, if strict liability torts are applied without recognizing cryptocurrency as negotiable, digital asset exchanges in the DIFC or ADGM could face severe compliance and liability risks when handling deposited assets that may be tainted by prior theft.

Ultimately, the High Court’s examination of the UTXO, physical control, and the boundaries of personal property will shape the commercial realities and legal architecture of the digital asset economy across the common law world.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile: https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com