The Legal Characterization of Cryptocurrency and Contractual Authorization Protocols: Analysis of HoneyBadger Enterprises Ltd. v Bue

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The judgment of the King's Bench for Saskatchewan in *HoneyBadger Enterprises Ltd. v Bue*, 2025 SKKB 123, provides salient guidance on the interpretation of payment authorization agreements in the context of cryptocurrency transactions and the allocation of loss following third-party fraud. The decision also engages with the persistent question of the legal classification of digital assets under existing statutory frameworks, particularly concerning contract and tort law.

The matter required the Court to adjudicate a dispute between HoneyBadger Enterprises Ltd. ("HoneyBadger"), a cryptocurrency vendor, and the Defendant, a customer. Both parties were victims of a fraud perpetrated by unknown third parties. The Defendant had established a Pre-Authorized Debit (PAD) Agreement with HoneyBadger. Subsequently, $240,000 CAD was utilized to purchase cryptocurrency, which was transferred to a wallet controlled by the fraudsters. While the Defendant authorized the initial $40,000 in transactions, he had also granted the fraudsters remote access to his computer. The fraudsters utilized this access to initiate the remaining $200,000 in purchases via the Defendant's email account,

without his knowledge. The financial institution reversed the payments, leading HoneyBadger to seek recovery.

The Characterization of Cryptocurrency: Contractual and Tortious Implications

A preliminary issue concerned the applicability of *The Sale of Goods Act (Saskatchewan)* (SOGA). The Defendant contended that the contract for the purchase of cryptocurrency was unenforceable under the statute for want of a written agreement. This required the Court to consider whether cryptocurrency constitutes "goods," defined in the Act as "all chattels personal other than things in action or money."

Richmond J. observed the inherent difficulty in applying historical legislation to novel asset classes [29]. The judgment referenced jurisprudence reflecting judicial caution in this area, including *Copytrack Pte Ltd. v Wall*, 2018 BCSC 1709, where the court declined to characterize cryptocurrency in a summary proceeding, deeming it a complex and undecided question [30].

The characterization of cryptocurrency is material not only to contract law under SOGA but also to the availability of proprietary torts. The Court cited *Ramirez v Ledn Inc.*, 2023 ONSC 3716, where the Ontario Superior Court held that "Bitcoins are intangible property," thereby precluding the application of the tort of conversion [31].

This characterization is significant. The tort of conversion is generally restricted to tangible property (chattels personal or choses in possession). If cryptocurrency is classified as intangible property, potentially as a *chose in action*, it not only limits the availability of certain proprietary torts but also places the asset outside the SOGA definition of "goods," which explicitly excludes "things in action."

In *HoneyBadger*, the Court ultimately circumvented a definitive

classification. Richmond J. held that regardless of whether cryptocurrency is a "good," the statutory defence failed because the transactions were evidenced by sufficient memoranda in writing, namely the email exchanges and the PAD Agreement [32].

Contractual Formation and Authorization Protocols

The central contractual dispute concerned the validity of the two unauthorized transactions totaling $200,000. The Court accepted the evidence that these purchases were initiated by fraudsters impersonating the Defendant [12]. Consequently, there was no objective manifestation of the Defendant's intention to be bound by those specific agreements.

HoneyBadger argued it had followed the agreed procedure, relying on instructions from the Customer's established email address, and therefore the Defendant remained contractually bound. HoneyBadger relied upon *Du v Jameson Bank*, 2017 ONSC 2422, where a bank was found not liable for acting on fraudulent instructions received from a customer's compromised email account.

Richmond J. distinguished *Du* based on the specific contractual terms. In *Du*, the account agreement explicitly authorized the bank to rely on electronic communications purporting to be from the customer and included robust limitation of liability clauses that placed the onus of securing electronic access squarely on the customer [37]. The agreement between HoneyBadger and the Defendant contained no such risk allocation provisions [38].

Conversely, the interpretation of the PAD Agreement proved decisive. Clause 8, addressing sporadic payments, stipulated:

"I/we agree that a password or security code or other signature equivalent will be issued [emphasis added] and will constitute valid authorization…" [24].

The Court found that HoneyBadger's practice of relying solely on incoming emails from the Defendant's address did not satisfy this requirement. The term "issued" implies a positive obligation on the Payee (HoneyBadger) to provide a verification mechanism. An email confirmation originating from the Payor's side does not constitute a security measure "issued" by the Payee [27]. HoneyBadger's reliance on the established pattern of communication did not override the express terms of the PAD Agreement [28].

Allocation of Loss

The case required an adjudication between two victims of fraud. While the Defendant's actions in granting fraudsters access to his computer facilitated the fraud [44], the Court determined that HoneyBadger's non-compliance with Clause 8 was also a direct cause of the loss regarding the unauthorized transactions. Had HoneyBadger implemented the required verification process, the fraud might have been prevented [50].

Applying principles of shared responsibility, the Court distinguished the initial $40,000, which the Defendant actively authorized. Compliance with the PAD verification requirements would not have altered that outcome. For the remaining $200,000, the Court found shared responsibility and apportioned the loss equally [55]. This judgment underscores that vendors must rigorously adhere to the security protocols stipulated in their contractual agreements.

The Characterization of Cryptocurrency in General Transactions

The judgment in *HoneyBadger* necessarily engages with the persistent challenge of characterizing cryptocurrency within established legal frameworks governing commercial transactions. While Richmond J. ultimately circumvented a definitive classification by resolving the SOGA defence on evidentiary grounds [32], the legal nature of digital assets

remains a critical issue in contract and tort law.

The difficulty arises from the application of traditional common law categories of personal property, choses in possession (tangible assets capable of physical possession) and choses in action (intangible rights enforceable only by legal action). Cryptocurrency does not fit neatly within these definitions. It is intangible, yet it does not typically represent a claim against a counterparty, distinguishing it from conventional choses in action like debts.

The characterization is material. In contract law, if cryptocurrency is not classified as a "good", which SOGA defines by excluding "things in action or money" [29], transactions involving its sale are not subject to the statutory implied conditions and warranties regarding title, quality, or fitness for purpose. Parties must instead rely solely on express contractual terms and common law principles governing the transfer of intangibles.

In tort law, the classification dictates the availability of proprietary remedies. As noted in the judgment, citing *Ramirez v Ledn Inc.*, the characterization of Bitcoin as "intangible property" precludes the application of the tort of conversion [31]. Conversion is historically restricted to wrongful interference with tangible chattels. This limits recovery mechanisms in cases of misappropriation, often necessitating reliance on equitable claims such as unjust enrichment or tracing.

In the context of *HoneyBadger*, the cryptocurrency functioned as the subject matter of the sale, akin to a commodity or investment asset, rather than the means of payment (which was fiat currency). The unique features of these assets, specifically their intangibility and the technical irreversibility of transfers once executed on the blockchain [3], heighten the importance of the contractual mechanisms used to facilitate their exchange. The *HoneyBadger* decision

illustrates a pragmatic judicial approach, focusing not on the ontological nature of the asset, but on the interpretation and application of the specific authorization protocols agreed upon by the parties. Absent definitive statutory guidance, the precise terms of the underlying contract remain the primary determinant of risk allocation and liability.

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