Feature

KEY POINTS

- The appeal in *Tulip Trading Limited v Bitcoin Association for BSV & Ors* [2023] EWCA Civ 83 does *not* establish that the core software developers responsible for maintaining the bitcoin protocol owe fiduciary duties or duties in tort to owners of bitcoin; rather, it establishes only that the appropriate time to decide on the existence of those duties in the circumstances pleaded by the claimant is once the facts are established following trial.
- The proposition that bitcoin is situate for the purpose of private international law at the place where the owner is domiciled or resident is inherently circular: in an outright proprietary dispute, it assumes what is required to be proved (namely, who is the "owner").
- Such approach to localising bitcoin to found jurisdiction runs the serious risk that judgments of the English court rendered on this basis will not be recognised or enforced by foreign courts.
- Localising bitcoin at the place where the majority of core software developers responsible for maintaining the underlying blockchain record are based better accords with the approach taken in private international law for, immovable, movable and other intangible assets.

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Cryptoassets as property under English law Pt II: ownership, situs and the circular question of jurisdiction

Judgment was recently handed down by the Court of Appeal in *Tulip Trading Limited v Bitcoin Association For BSV & Ors* [2023] EWCA Civ 83. This article focuses on two issues arising from the basis upon which Tulip Trading Limited's case and the issue of jurisdiction proceeded in the Court of Appeal: (i) who is the "true owner" of the bitcoin; and (ii) the circular nature of founding jurisdiction.

WHAT THE APPEAL WAS ABOUT

Judgment was recently handed down by the Court of Appeal (Birss LJ, with whom Popplewell and Lewison LJJ agreed) in *Tulip Trading Limited v Bitcoin Association For BSV & Ors* [2023] EWCA Civ 83. As the first cryptoasset case to come before the Court of Appeal – and one invoking those quasi-magical words "fiduciary obligations" complete with its more advantageous suite of remedies at that – it will, no doubt, be of considerable interest to both those with an interest in the modern law of fiduciary obligations, as well as those keeping a keen eye on the latest crypto-legal developments in the English courts. Accordingly, it is especially important to be clear at the outset as to what, exactly, the issue on appeal was, and what the case, then, actually decided.

The appeal was brought against Falk J's decision, reported at [2022] EWHC 667 (Ch) and commented on in previous articles,[1] that service of proceedings against the defendants out of the jurisdiction should be set aside. In sum, the claimant (TTL) alleged: (i) it was the owner of the bitcoin attributed to two identified public addresses; but (ii) had been unlawfully deprived of the corresponding private keys after falling victim to a fraudulent hack. TTL had not been able to identify the perpetrators of the fraud but, instead, had brought proceedings against the core software developers of the source code underpinning the relevant bitcoin networks (the defendants). TTL's case was that, as persons with considerable control over such source code, the defendants could reverse the effects of the hack by implementing a software "patch" that would either transfer the assets to a new public address with new private keys, or to create replacement private keys for the identified public addresses. In its application to serve proceedings out of the jurisdiction, TTL relied *inter alia* on: (i) causes of action primarily based on fiduciary obligations owed by the defendants to it as the "owner" of the bitcoin in question; and (ii) Gateway 11 of PD6B, which permits service out where the subject matter of the claim "relates wholly or principally to property within the jurisdiction".

Falk J addressed all three limbs of the well-known test for service out and found for TTL on the issues of the gateways under PD6B, and as to whether England was the appropriate forum for the dispute. However, Falk J concluded that TTL had not established a serious issue to be tried on the merits of the case, because it had no realistic prospect of establishing that the facts pleaded amounted to a breach of fiduciary duty owed by the defendants to TTL to implement the software "patch" to assist it, as owner, to recover access to the "stolen" bitcoin.

Hence, it is important to stress that the Court of Appeal's decision to allow TTL's appeal on this issue does *not* establish that the core software developers who maintain the bitcoin protocol owe fiduciary duties to an "owner" of that cryptocurrency. To the contrary, Birss LJ recognised at [71] that the facts of the case were "new and quite a long way from factual circumstances which the courts have had to examine before in the context of fiduciary duties"; and at [86] that for TTL's case thus to succeed would involve "a significant development of the common law on fiduciary duties". Accordingly, Birss LJ did not "pretend that every step along the way [for TTL to succeed at trial] is simple or easy" and made clear at [91] that all the decision establishes is that: the case advanced by TTL raises a serious issue to be tried; and the appropriate time to decide on the existence of fiduciary duties in the circumstances pleaded by TTL would be once the facts are established following trial.

In a similar vein, this article does not seek to pre-empt the outcomes of any subsequent

trial by commenting on any issues of law or fact that may fall to be determined through that legal process. Instead, it focuses on two issues arising from the basis upon which TTL's case and the issue of jurisdiction proceeded in the Court of Appeal. As this article will seek to show, both were premised on assumptions as to the position in the law of property; which call into question whether, even if TTL is successful at trial, such victory will serve TTL's ultimate aim of recovering access or control to the bitcoin in issue.

THE MISSING PIECES OF THE PROPERTY PUZZLE

It is convenient to begin with TTL's position regarding the persons to whom the alleged fiduciary duties are owed. In the court below, as set out at [55], TTL had accepted that the duty "must be owed to bitcoin owners generally", but qualified this slightly in response to the difficulty that the remedy it sought – ie a software patch enabling TTL to regain control over the bitcoin in question – would be for TTL's benefit alone. TTL's answer to the disadvantage such remedy might cause to the other participants in the bitcoin network, notably those with a rival claim to the assets, had been that the duty would be owed to the "true owner".

This modification seems only slight in the context of TTL's case on the duty, which was, in any event, ultimately rejected by Falk J as being no answer to the issue of risk to the defendants (noted at [56]). However, it takes on greater significance in the context of TTL's case on breach. TTL's original case had been that the defendants were already in breach of the alleged duty at the time when proceedings had been issued. This was met with the objection that the supposed duty would require the defendants to investigate and make decisions about the (potentially) disputed ownership of the relevant bitcoin and then give effect to those decisions. Accordingly, TTL had sought to advance an alternative case based on anticipatory breach, which Birss LJ summarised as follows:

> "... the duty is said to arise when it is established (e.g. by a court of competent jurisdiction) that the true owner of the bitcoin at a certain address is unable to access it because their private key has been stolen by thieves ... the amended case puts the duty on the basis that it is only breached if the developers do not act with the benefit of a decision of a court of competent jurisdiction on the ownership of the property. The developers do not have to adjudicate the dispute themselves."[2]

Falk J had refused to permit the alternative case in the absence of a proper application to amend, but TTL had been permitted to advance this alternate case in the Court of Appeal on the basis, set out at [65], that a Draft Amended Particulars of Claim had been produced and an undertaking given to make an application to amend had been made at a very early stage of proceedings where any prejudice caused could be compensated in costs. It appears, therefore, that any trial will proceed on the basis of this amended case.

Two issues, however, arise: who is the "true owner" of the bitcoin; and which is the "court of competent jurisdiction"? Both are central to TTL's amended case, which proceeds on the assumption that TTL is the "true" owner of the bitcoin in issue, and that the case is properly within the jurisdiction of the English courts. Whilst this may suffice to meet the standard of proof required for applications for service out of the jurisdiction, a closer examination reveals that these assumptions are based on entirely circular reasoning that will not necessarily hold once subjected to the higher standard of scrutiny that TTL's case will inevitably face at trial and beyond.

WHO IS THE "TRUE OWNER"?

Although the issues to be tried are not proprietary in character, it is not insignificant that TTL's case on fiduciary duties is premised on the assertion that it is the "true owner" of the bitcoin in issue. As noted previously, the case on fiduciary duties is somewhat curious, and appears to have been constructed with the sole aim of obtaining what is, in effect, a possessory remedy to recover the bitcoin *in specie*.[3] Nevertheless, even if, following trial, English law recognises a new set of circumstances in which a fiduciary relationship has been recognised, that does not necessarily mean TTL will reap the benefit of having steered that development through the courts. The simple fact remains that TTL's case assumes what TTL is still required to prove: that TTL is, as a matter of law, the "true owner" of the bitcoin in issue and is, therefore, the person to whom this newly recognised species of fiduciary obligation is owed.

Whether or not English law recognises a concept of "ownership", let alone has any principles for determining who of rival claimants to an asset is the "true owner",[4] the key point for present purposes is that property rights are never truly absolute and indefeasible. Property rights, once acquired, may subsequently be lost: one of the key concerns of property law is to determine which of two, often innocent, parties claiming entitlement to the same asset will lose out to the other. Thus, the facts underpinning the classic dispute to things in possession remain some variation on the following theme: A holds title to the asset and is unlawfully dispossessed by B, a dishonest fraudster. B then sells it on to C, who has no idea that the asset has been stolen and pays for it in good faith. B cannot be found, but A has managed to locate the asset, now in the hands of C. The question of whether A or C has the better claim is answered differently across jurisdictions, but it by no means follows that, simply because A had the best claim to the asset before falling victim to B's fraud, A's claim will always prevail against C.

Even if, therefore, it may be assumed that TTL was the "true owner" of the relevant bitcoin before the alleged hack, it does not follow that TTL remains the "true owner" such that the defendants owe the alleged fiduciary duties to TTL, and not to some other participant in the bitcoin network. This, rightly, did not go unnoticed in the court below: in the context of the risk posed to the defendants in the form of legitimate complaints from rival claimants to the bitcoin in issue should TTL be granted the remedy it sought, Falk J considered it worth noting in a footnote that "although by no means determinative of this point [...] TTL has not sought to join as parties any third parties

who have asserted rival claims, but rather has reached its own conclusion that those claims are not seriously credible".[5]

It is further worth noting that TTL's present position as a matter of fact runs counter to the prevailing trend, both in England and internationally, to consider that generally, the person who has lawfully acquired control over a cryptoasset, usually by knowledge of the private key, is its "owner".[6] Hence, even if TTL were unlawfully "dispossessed" of the bitcoin in dispute, it cannot be assumed that the rival claims alluded to in the court below are being advanced by the person responsible for the hack; there is no reason to suggest that such claims are being advanced by anyone other than third parties to the fraud on the basis of a lawful acquisition. As a matter of English law as it presently stands, TTL cannot assert a superior title to ground a claim in conversion against such third parties, as bitcoin cannot be the subject of possession.[7] The most TTL can hope for is an equitable claim; in which case, all will depend on whether those third parties were bona fide purchasers for value of the bitcoin without notice of TTL's interest. Should such claim in equity fail, those third parties would have a better claim to be the "true owner" of the bitcoin in dispute; and any fiduciary duty that TTL has taken the considerable trouble to establish exists by the present proceedings will be owed by the defendants, not to TTL, but to those third parties.

THE "COURT OF COMPETENT JURISDICTION"

The foregoing analysis has proceeded on the assumption that English law is the appropriate governing law to determine the issue of "true owner" but it cannot be assumed that English law is indeed the appropriate governing law to be applied. Given, however, that the issue of "true owner" does not fall to be determined in the present proceedings, but remains simply the premise of TTL's case on fiduciary duties, it is, at this stage, premature to consider the issue of governing law regarding this key issue.[8] However, the same cannot be said of jurisdiction, where the assumption as to "true ownership" inherent in TTL's case is further problematic for the private international law aspects of the present claim.

There was no challenge in the Court of Appeal to Falk J's finding that the case involved property situate within the jurisdiction for the purpose of Gateway 11. Accordingly, although Birss LJ also recognised at [83] that the remedy TTL sought might place the defendants at risk if a rival claimant to the relevant bitcoin obtained a contrary judgment in another court, Birss LJ did not consider that this meant there was not a serious issue to be tried in what would "otherwise be a properly arguable case within the [English] court's jurisdiction". This conclusion as to the jurisdiction of the English courts, however, is based on entirely circular reasoning; one which begins with Gateway 11 and its reflection of the *situs* principle.

The *Situs* Principle

Most, if not all, systems of private international law reserve special positions for the *lex loci rei sitae* (*lex situs*) and the *forum loci rei sitae* (*forum situs*) in cross-border disputes involving property. Gateway 11 is no exception and confers jurisdiction on the English courts in respect of disputes relating to assets physically located within the territorial borders of England and Wales. Similarly, but on a slightly narrower footing, for proceedings which have as their object rights *in rem* in immovable property in the EU, Art 24(1) of the Brussels I Regulation (Recast) confers exclusive jurisdiction on the courts of the member state in which the property is situate.

Recourse to the physical location of a thing as the apposite connecting factor is hardly controversial in the context of immovables, but its application to tangible movables has come to be accepted in England only in the past century or so as the law scrambled to accommodate the increasing importance of tangible movables in cross-border commerce. The prevailing rule in the 19th century was that proprietary claims to movables were governed by the law of the owner's domicile, which makes perfect sense in a socio-economic context where land remained the most socio-economically important asset; and transfers of "significant" movables tended to occur in the context of succession or matrimonial property regimes.[9] Key to note is that in such contexts, "ownership" was typically not in dispute, as transfers of movables tended to be "involuntary" transfers of entire estates, not of particular movables. By the 1930s, however, transfers of movables tended to be truly voluntary, *inter vivos* transfers of particular movables, usually pursuant to an international contract for the sale of goods. This context calls for different considerations, and the legal significance of the changed economic circumstances is apparent in the cases that tended to prefer the *situs* as the apposite connecting factor, in preference to alternatives such as the place of contracting.[10] Although the application of the *situs* principle to tangible movables is not without its critics,[11] it largely prevails across the various systems of private international law found around the world.

Application of the *situs* principle is somewhat more difficult to justify in the context of intangibles, where the principle also prevails, albeit, with the help of some judicial fictions: things that technically exist "nowhere" are ascribed an artificial *situs* "somewhere" so that the *situs* rules can continue to be applied. Thus, in England, simple debts are considered situate at the habitual residence of the debtor;[12] registered intangibles, such as registrable shares, are held to be situate at the place where the register is maintained.[13] In the EU, the same approach has been applied to dematerialised securities held by a financial intermediary, which are deemed situate in the place where the relevant securities account is maintained.[14]

Irrespective of whether such connecting factors truly warrant the elevated status of "artificial *situs*" or should simply be recognised for what they really are, as just "another connecting factor", there is some pragmatic logic behind these judicial fictions that is particularly relevant in the present context of jurisdiction. Here, the choice of an alternative connecting factor to serve as the artificial *situs* often reflects the realities of obtaining an effective remedy. For the simple debt, the underlying rationale is that ultimate enforcement of the obligation underpinning the thing in action requires the "owner" to bring legal proceedings in the courts exercising personal jurisdiction over the defaulting debtor to compel payment in satisfaction of

the claim. Similar considerations underpin company shares, registered assets, securities held with an intermediary; as well as those intangible assets that fall outside the general property law regimes and are subject to their own special rules of private international law, such as IP rights and company shares: at the heart of the relevant rule of private international law lies some recognition of the pragmatic need for jurisdiction and applicable law to be tied to practical control[15] over the asset because a judgment in conflict with the *lex situs* will often be ineffective.[16]

Cryptoassets, by their very nature, test the limits of a territorial approach to private international law as they do not simply exist "nowhere" but are deliberately designed to exist "everywhere *and* nowhere" *at once*. Accordingly, it is much harder to select just one alternative connecting factor to serve as the artificial *situs*; although various proposals have been advanced for the *situs* of a cryptoasset – ranging from the location of the nodes, the private key, the transferor, and even the domicile of the original coder of the underlying DLT protocol – none are particularly compelling.[17]

Ion Science Limited v Persons Unknown (Unreported, 21 December 2020) was the first English case to consider the *situs* of a cryptoasset, and Butcher J drew upon Professor Dickinson's well-known proposal[18] to conclude at [13] that there was at least a serious issue to be tried that the *situs* of a cryptoasset is "the place where the person or company who owns it is domiciled". Butcher J's conclusion was then adopted by HHJ Pelling (sitting as a judge of the High Court) in *Fetch.AI v Persons Unknown* [2021] EWHC 2254 (Comm). Hence, the proposition that cryptoassets are situate where the owner is domiciled or resident has broadly come to be accepted for the purpose of the English rules of private international law for property matters.

In the court below, there had been some dispute as to whether the correct test thus refers to the residence of the owner or the domicile of the owner[19] but, curiously, there was no objection to the underlying premise in both cases that TTL was actually the "owner" of the bitcoin in dispute. In the context of jurisdiction, the circularity inherent in the argument poses far greater difficulty than it does in the context of the fiduciary claim; especially in circumstances where both the High Court and Court of Appeal recognised the risk posed to the defendants should a rival claimant to the bitcoin in issue obtain a contrary judgment to that rendered by the English courts in a foreign court.

In sum: Gateway 11 reflects the *situs* principle to permit service of proceedings on foreign defendants where the claim relates to property in the jurisdiction. For this purpose, it has been necessary to ascribe to the bitcoin in issue an artificial *situs*. The connecting factor chosen to this end has been the location of the "owner". However, in property disputes, the identity of the "owner" is the very thing in issue between various competing claims to the asset; it is something that will not be determined until the conclusion of proceedings. How can this, then, be taken to decide the preliminary question of the appropriate forum and the place where proceedings should be issued? As noted above, TTL has not proven it is the "owner" of the bitcoin in dispute as a matter of law. If it is the case that the English rules of private international law have recourse to "ownership" as the apposite connecting factor for proprietary claims to bitcoin, until TTL establishes it is the "owner" of the bitcoin in dispute, it is highly doubtful that the English courts are of "competent jurisdiction" at all, at least for claims relating to property "within the jurisdiction". The only alternative is that the English courts recognise all and any unsubstantiated assertions of "ownership" to the bitcoin in dispute – including the rival claims alluded to in the court below – and find some method of determining which of the various competing jurisdictions and applicable laws should prevail, appropriately conceding jurisdiction in favour of the courts that emerge from that analysis.

The place of practical control

From this, it is particularly curious to note that the choice of the "owner" as the apposite connecting factor for proprietary claims to cryptoassets does not reflect the logic underpinning the choice of an artificial *situs* generally. As noted above, the general approach for both movables and intangibles reflects the logic underpinning the rule for immovables: localise them at the place where they can be effectively dealt with in law.[20] Thus, assets that rely on some type of register or record to reflect property rights – whether they be registered securities, intermediated securities, company shares, IP, or entries in a EU "public register"[21] – are generally localised at the place where the relevant register or record is maintained.

It has been argued elsewhere that cryptoassets could plausibly be considered a registered asset,[22] and analogy was drawn in the present appeal at [72] between the defendants, as those maintaining the bitcoin protocol and the blockchain record, with those software developers responsible for maintaining the source code underpinning commercial banking ledgers. Although such analogy was not raised for the purpose of a property characterisation, if power over the asset – in the sense of power to implement changes to the register or record on which "ownership" is maintained – is the key connecting factor for issues of jurisdiction, the logical conclusion that follows from TTL's assertions as to the defendants' power over the relevant bitcoin protocol is that the *situs* of the bitcoin in dispute is the place where the *defendants* – or, at least, the majority of them – are habitually resident or domiciled.

Localising the bitcoin in dispute thus is not only consistent with the approach taken in respect of other asset types, but leads to a far sounder conclusion as to jurisdiction than the "exorbitant" jurisdiction presently asserted by TTL and the English courts in permitting service out on the defendants. If, on TTL's case, the defendants exercise such control over the bitcoin in dispute that it is they, not any other person, who is the proper defendant to TTL's claim relating "wholly or principally to property within the jurisdiction", then, by analogy with all the registered assets considered above, as well as the simple debt, movables, and immovables, it is for TTL to sue them in the courts that exercises ordinary personal jurisdiction over the defendants such that they may lawfully be compelled to ensure any judgment in respect of the asset in dispute is effective. This is far more preferable to an exercise of the "exorbitant" jurisdiction of the English courts.

It therefore is strongly arguable that the question of jurisdiction in the present case has been decided on an erroneous application

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Biog box
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of the policies underpinning the property rules of private international law. This runs a high risk that a judgment of the English courts in this matter will not be recognised or enforced in other jurisdictions, on the basis that jurisdiction was not properly founded. Hence, the risk to the defendants in the case of a rival claimant obtaining a contrary judgment in a foreign court – appreciated by both the High Court and Court of Appeal – cannot be underestimated.

CONCLUSIONS

The case of *Tulip Trading Limited v Bitcoin Association For BSV & Ors* continues to provide some much-needed stimulation of the common law of cryptoassets; ranging from fiduciary duties, duties in tort, property and private international law. Although the present appeal does not decide anything higher than that there is a serious issue to be tried regarding the existence of fiduciary duties in the circumstances pleaded by TTL, the case draws attention to further issues that will need to be resolved under English law relating to the priority of property rights in cryptoassets, and to the apposite connecting factor for cross-border property disputes concerning bitcoin in the English rules of private international law. ■

1 N Yeo, 'Tiptoe Through the Tulips: fiduciary and common law duties of care in cryptocurrency' (2022) 7 JIBFL 474; A Held, 'Cryptoassets as Property Under English Law: Surveying the Present Lie of the Land', (2022) 8 JIBFL 538.

2 [2023] EWCA Civ 83 (CA), [81]-[82].

3 A Held (fn 1), 542.

4 See generally A Held (fn 1).

5 [2022] EWHC 667 (Ch), fn 3 to para 80.

6 See, eg UK Jurisdiction Taskforce, 'Legal Statement on Cryptoassets and Smart Contracts', November 2019, [43] (https://technation.io/lawtech-uk-resources/#cryptoassets > and the Draft UNIDROIT Principles on Digital Assets and Private Law, Principle 6 and Commentary < https://www.unidroit.org/wp-content/uploads/2023/01/Draft-Principles-and-Commentary-Public-Consultation.pdf).

7 *OBG v Allan* [2007] UKHL 21, applied in *Lubin v Persons Unknown* [2021] EWHC 1938 (Comm) in respect of an intended claim in conversion in respect of bitcoin.

8 It should, however, be noted that the same issue of circularity in localising bitcoin by reference to the "owner" discussed further in this article in the context of jurisdiction also applies to the issue of determining what law actually governs the issue of "true owner" inherent in TTL's case on fiduciary duties.

9 See further *Dicey, Morris and Collins on the Conflict of Laws* (16th ed, Sweet & Maxwell 2022), [25-003].

10 See, eg *Re Anziani, Herbert v Christopherson* [1930] 1 Ch 407, 420 (Maugham J): "I do not think that anybody can doubt that. With regard to the transfer of goods, the law applicable must be the law of the country where the moveable is situate. Business could not be otherwise;" and *Macmillan Inc v Bishopgate Investment Trust plc (No 3)* [1996] 1 WLR 387, 399 (Staughton LJ) "a purchaser ought to satisfy himself that he obtains a good title by the law prevailing where the chattel is … but should not be required to do more than that. And an owner, if he does not wish to be deprived of his property by some eccentric rule of foreign law, can at least do his best to ensure that it does not leave the safety of his own country".

11 See generally A Held, 'Cryptoassets and Decentralised Ledgers: Does Situs Actually Matter?' in A Bonomi, M Lehmann, and S Lalani (eds) *Blockchain and Private International Law* (Brill, 2023 – in print).

12 *Dicey, Morris and Collins* (fn 9), Rule 136(1); [23-026]-[23-032].

13 *Dicey, Morris and Collins* (fn 9), [22-042] fn 108.

14 Directive of the European Parliament and of the Council 2002/47/EC of 6 June 2002 on Financial Collateral Arrangements [2002] OJ L168/0043, Art 9(1); Directive of the European Parliament and of the Council 98/26/EC of 19 May 1998 on Settlement Finality in Payment and Securities Settlement Systems [1998] OJ L166/45, Art 9(2); Directive of the European Parliament and of the Council 2001/24/EC of 4 April 2001 on the Reorganisation and Winding Up of Credit Institutions [2001] OJ L125/15, Art 24.

15 See, eg *Glencore International AG v Metro Trading International Inc (No.2)* [2001] 1 All ER (Comm) 103; [2001] 1 Lloyd's Rep 344, [31]-[32] (Moore-Bicke J): "[...] Practical control over movables can ultimately only be regulated and protected by the state in which they are situated and the adoption of the lex situs rule in relation to the passing of property is in part a recognition of that fact. That is just as much true in relation to the passing of property between the parties to the transaction as it is in relation to the passing of property between one or other of them and a third party. Some recognition of the practical control exercised by the state in which goods are situated is no doubt reflected in the expectation that a transaction which would be effective by the law of that state to pass a good title will in fact do so. These considerations together with the practical considerations of trade and commerce provide strong support in my view for the adoption of a lex situs rule in all cases [...]."

16 See further *Dicey, Morris and Collins* (fn 9), [23-025] and fn 59.

17 See further A Held (fn 11).

18 'Cryptocurrencies and the Conflict of Laws,' in D Fox and S Green (eds) *Cryptocurrencies in Public and Private Law* (OUP 2019), [5.107] et seq.

19 [2022] EWHC 667 (Ch), [142]-[147].

20 For company shares, this is the place where, under the law of the country in which the company was incorporated, they can be effectively dealt with as between the owner for the time being and the company: *Macmillan Inc v Bishopsgate Investment Trust Plc (No 3)* [1996] 1 WLR 387 (CA).

21 Article 24(3) of the Brussels I Recast Regulation.

22 A Held, 'Private Keys v Blockchains: What *is* a Cryptoasset in Law?' (2020) 4 JIBFL 247.

Further Reading:

- Tiptoe through the tulips: fiduciary and common law duties of care in cryptocurrency (2022) 7 JIBFL 474.
- Cryptoassets as property under English law: surveying the present lie of the land (2022) 8 JIBFL 538.
- LexisPSL: Banking & Finance: Practice Note: Cryptoassets for dispute resolution lawyers – key and illustrative decisions.