CHAPTER 6

Conflict of Jurisdiction. Criteria for Assessing Jurisdiction in the Context of Cross-Border Emerging Digital Asset Disputes

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1 Introducing Emerging Digital Assets

Before delving into the topic of jurisdictional objections, it is necessary to start by discussing the concept of "digital assets". There are a number of definitions trying to capture the concept of digital assets. Some are very broad: "*any asset that is represented digitally or electronically*",[1] or "*non-tangible assets in a digital form*",[2] or *"electronic record which is capable of being subject to control."*[3] and others are a bit more specific hinting at the underlying technology or the rights conferred to the owners "*digital units of data in a shared system jointly maintained and updated by multiple parties that (i) can be directly controlled by the asset holder via cryptographic keys, and (ii) may represent a set of rights*",[4] or "*any representation of information tracked on a blockchain that confers ownership, access rights, representation, voting rights or utility*".[5]

The majority of sources defining digital assets complement the definition with specific examples,[6] or give details about the technology used.[7] Given the difficulty in pinpointing a specific concept, the term 'digital assets' is perceived as encompassing 'classical' digital representations (such as videogames, animations, etc.), but also digital assets which are created with the help of emerging technologies such as artificial intelligence or blockchain. Without aiming to be technical and exhaustive, for the purpose of this chapter, the term 'emerging digital assets' will be used as an umbrella term to cover an electronic record which confers the owner a right, or which otherwise has an economic value and which was created with emerging technologies such as artificial intelligence or distributed ledger technologies (by way of example, cryptocurrencies, virtual land, or other fungible and non-fungible tokens).

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Disputes involving emerging digital assets are not new anymore, they are more and more prevalent lately. The first ones started around the end of 2018,[8] and developed quite rapidly.[9] Issues on substantive questions of law, for example, whether or not cryptocurrencies can be recognised as legal property, are now more clearly settled[10] through case law and/or jurisprudence. On the contrary, when it comes to procedural issues, and more specifically jurisdictional issues, things are more nuanced, and they are likely to be treated differently from one jurisdiction to another.

Courts' jurisdiction is defined by whether a specific state has the power or authority to decide over a dispute involving a particular person, thing or intangible object.[11] Therefore, the concept of jurisdiction is, by definition, a territorial matter limited by the boundaries of a particular state. At the opposite end of the spectrum, emerging digital assets are inherently delocalised or involve multiple geographical locations.[12] These fundamentally different key characteristics clash and raise a series of legal questions regarding courts' jurisdictions in emerging digital assets disputes.

The topic of jurisdictional objections raises numerous challenges, especially when emerging digital assets are involved. Several issues are relevant to mention here. First, the issue of *ratione materiae* jurisdiction. In some systems of law, civil courts divide their jurisdiction based on the value in dispute. This can be problematic given the volatility of digital assets. Furthermore, jurisdiction may be based on the legal nature of the dispute and whether it involves a monetary claim or a proprietary claim; as the legal nature of emerging digital assets is still not clear, for example, cryptocurrencies can be considered property,[13] or a security[14] or a means of payment,[15] therefore the parties find themselves in a difficult position in choosing the right court. Second, the *ratione personae* jurisdiction issue. This is potentially challenging in the context of emerging digital assets given the frequent anonymity/pseudonymity of the persons involved in the transaction, both when it comes to the person bringing the claim (which requires proof they are entitled in fact to claim a right over a specific asset) and also when it comes to finding/identifying the defendant. Third, the *ratione loci* jurisdiction issue. In the context of emerging digital assets, the question arises whether there are sufficient elements to prove a link with a specific state, especially taking into account the decentralised or multi-jurisdictional nature thereof. Another layer of complex-

ity is brought by the legal status of emerging digital assets in the jurisdiction in question, in some countries those assets range from being unregulated, to being subject to strict requirements or even being banned.[16]

All these facets of jurisdictional objections involving emerging digital assets have one point in common: the connection to more than one jurisdiction and potential conflict in selecting the right court to bring the claim. The aim of the present paper is to shed some light on this area by analysing the variety of criteria taken into account by jurisdictions around the world when faced with the question of which court has jurisdiction, as many other countries (some of them potentially unknown to the parties) could be relevant in retaining jurisdiction.

To offer a broad view of the topic, the author has selected a couple of court cases from different common and civil law legal systems, involving some of the most common issues in emerging digital assets disputes: fraud giving rise to a tort action and delictual liability; tax offences giving rise to regulatory action; and contractual issues arising out of sale and purchase agreements. The author has also taken into account a variety of emerging digital assets such as virtual land, cryptocurrencies, and non-fungible tokens (NFT's).

It is important to note from the outset, that at the moment, there are no international mandatory instruments that cover the issue of jurisdiction in the context of digital assets disputes. Therefore, it is in the hands of national courts on how to assess if they have jurisdiction over a specific dispute. Nevertheless, one helpful non-binding instrument addressing this issue is the UNIDROIT Principles on Digital Assets and Private Law published in 2023.[17]

2 Tort Matters/Delictual Liability

Tort liability (in common law systems) or delictual liability (in civil law systems) is born outside a contract and gives the person who was harmed/suffered a loss the right to recover damages in compensation from the physical or legal person who caused the harm or loss.[18] It is important to

note here that depending on the legal system and the circumstances of the case, the same action can lead to tort liability or criminal liability. One of the areas of emerging digital assets disputes that has kept courts particularly busy have been cases involving unauthorised access to digital assets, misappropriation or fraud.

Claimants often reach out to courts seeking assistance in recovering their lost cryptocurrencies or NFT's. However, it is often that the identity of the perpetrators is not easy to track from a classical point of view. The immediacy of digital asset transactions makes it possible for people to transfer, sell, and own assets without the need to reveal their name, address, bank account, etc. – details which would be usually shared in 'traditional' transactions. The problem that arises is that current legal norms on jurisdiction are based on 'classical' elements of a traditional transaction which does not necessarily correspond to the realm of emerging digital assets. Nevertheless, there are jurisdictions, such as England and Wales that allow claimants to start a trial against a "*person unknown*", or "*John Doe*" in U.S., if the details of the defendant are not identified.

In general, in tortious claims, the court that has jurisdiction is the one where the damage has occurred or where the harmful event occurred. Finding the place of damage in an emerging digital assets dispute is not as straightforward as in traditional disputes. One example of a tortious claim case involving multiple jurisdictions is *Ion Science vs Person Unknown.*[19]

The background of the dispute is the following: there were two claimants (i) the first one being a company based in England & Wales (Ion Science), which specialised in gas detection products, (ii) and the second being an individual domiciled in England & Wales, Mr Johns who was Ion Science's (first claimant's) sole director and sole shareholder. There were three defendants:

1 The first respondent, 'person unknown', were a group of individuals connected to Neo Capital, a purported entity in which the claimants believed they invested their capital in exchange for a cryptocurrency.
2 The second respondent, Binance Holdings ('Binance'), was a Cayman company that the claimants believed to be the parent of the group of companies that operates the Binance Cryptocurrency Exchange;

3 The third respondent, Payment Ventures, was a US entity, believed to be the parent of the group of companies that operate the Kraken Cryptocurrency Exchange ('Kraken').

Based on the people involved, the dispute has ramifications in different jurisdictions, and also includes an unknown group of people who may be located anywhere.

The claimants sued a person unknown to recover the money invested in an initial coin offering (ICO) that never came to fruition. The claimants were approached by some individuals and were persuaded to invest in cryptocurrencies. They started with small amounts, and after those were successful, the stake increased. The defendants operated to convince the victim, Mr Johns, to give remote access to his computer. The route of the money was as follows: Mr Johns would transfer money from his company account, Ion Science, to his personal account, and then to his Coinbase account. The money from the Coinbase account was then converted into bitcoins and the resulting bitcoins were purportedly transferred to a wallet address held by a crypto entity which advertised the ICO. The money provided by Mr Johns and Ion Science was never invested in the ICO and ended up in the digital wallets of the fraudsters.

Mr Johns sued the group of people allegedly connected to this crypto entity to recover his money through a proprietary injunction, a worldwide freezing order; and also demanded Binance and Kraken to disclose information about the people connected to the crypto entity/wallet involved in the transactions.

The court decided that although there are several jurisdictions that can be relevant to the situation, England and Wales was the appropriate forum to decide on all the claims against the three respondents. Regarding the claims against the first respondent, whose location was unknown to the court, the English court decided that it had jurisdiction to hear the case, as the damage occurred in England and Wales. The court took into account the following criteria:

- the relevant funds were transferred from England and Wales (the bank account which funded the Coinbase account was an account based in England and Wales);

- the relevant bitcoins were located in England and Wales prior to the fraudulent transfer;
- the claimants, namely the person or company who owned the digital assets were domiciled in England and Wales;
- the documents were in English;
- the witnesses were based in England.

After analysing whether there is a serious issue to be tried and whether there is a good arguable case, the court held as follows regarding the jurisdiction over the person unknown: "*Finally in relation to the proper forum, in a case of a persons unknown claim it is obviously difficult to identify another forum, but here in addition to that simple point that the claimants are domiciled in England and Wales, the relevant funds were transferred from England and Wales, the relevant bitcoin are or certainly were located in England and Wales and also the documents are in English and the witnesses are based in England, at least on the claimants' side. For all of those reasons, I am satisfied for the purposes of this application that it has been shown that England is the proper forum for the trial of the claimants' claims*".

However, even if the second and the third respondents were based outside England and Wales, the court considered it justified to grant the application for a disclosure order (Bankers' Trust) concerning the information they held about the first respondent. The court acknowledged that such an order can be served outside the England and Wales jurisdiction in exceptional circumstances. The court applied the same rationale for establishing jurisdiction over the first respondent, and held that since the disclosure order related to property within England and Wales (where the bitcoins are or were) and that the *lex situs* was where the owner resided or was domiciled, therefore the court had jurisdiction to decide on the disclosure order.[20]

In a fairly similar case before the High Court of England and Wales, *Osbourne v Person Unknown and another*,[21] the court decided that since the claimant was located in England, English law treats the assets as being removed from that jurisdiction, and therefore the English courts were the appropriate forum to hear the claims. The dispute involved the misappropriation of NFT's by an unknown person. The victim sought an order restraining the dissipation of the NFT's by the unknown person, as well as

a disclosure order (Bankers' Trust) directed to Ozone Networks Incorporated, a corporation incorporated in United States of America, requiring it to provide information enabling the claimant to trace or identify the persons unknown who controlled the wallets holding the NFT's. Regarding the jurisdiction over the person unknown, the English High Court held as follows:

> "*It is necessary now to turn to the third question that therefore arises, of whether England is clearly the appropriate jurisdiction for dealing with this claim. As far as that is concerned, as matters currently stand, I have no information as to where the persons unknown are located, or the jurisdictions in which they are to be found. On the other hand, what I do know is that the claimant is located in England and English law treats the assets as having been removed from her in England. In those circumstances, on balance, and at this stage in the enquiry, I am satisfied that England is the appropriate forum. I am satisfied in those circumstances that permission should be granted to serve the persons unknown out of the jurisdiction*." (emphasis added)

By contrast with the previous case, the court only relied on one simple criterion: the place where the claimant resided/had her domicile. Regarding the disclosure order against the U.S. corporation, Ozone, the court was more cautious and even hesitant in retaining jurisdiction, acknowledging the difficulties in imposing such an order on a foreign entity. But nevertheless, it granted the application, on "*the assumption that Ozone would wish to cooperate with the English Courts*".[22]

3 Regulatory Issues (Taxation, Financial Instruments, Consumer)

Another prevalent topic in the area of emerging digital assets disputes is around regulatory issues such as taxation, consumer protection or whether or not some digital assets qualify as financial products/instruments. Courts have to decide whether or not their national regulatory authorities have the power to impose obligations on emerging digital assets traders or owners, and consequently whether the respective dispute falls under their jurisdictions.

A highly debated topic in the United States is whether or not cryptocurrencies are considered securities,[23] and therefore falling under the regulatory powers of the Securities and Exchange Commission (SEC),[24] or commodities,[25] which are under the realm of the Commodities and Futures Trading Commission (CFTC) authority.[26] The criterion in establishing jurisdiction when it comes to disputes over the legal status of emerging digital assets (whether as financial instruments or not) is not necessarily the place where the digital assets provider is based, but rather the location of their potential customers.

In a dispute involving Laino Group Limited ('Pax Forex'), the Southern District of Texas held that PaxForex violated the U.S. Commodity Exchange Act regarding retail investors by offering unregistered leveraged transactions in cryptocurrencies. Pax Forex is an online trading platform, registered as a company in Saint Vincent and the Grenadines, with data centres in New York and London. The platform operated with fiat currencies but also with cryptocurrencies such as Bitcoin, Ethereum, and Litecoin. In arriving at its decision, the court took into account that the platform "*solicits or accepts orders from customers, including those in the United States*", through the following: (i) their website, which had a drop down menu with an option of selecting the United States as the customer's country of residence, as well as an American flag symbol that corresponded to the customer's area code and phone number; (ii) Pax Forex identified themselves as "*The Best Forex Broker for Beginners in the USA*" in one of their blog posts; (iii) their website contained testimonials from U.S. based customers, etc.[27] What is important here is not solely the actual location of their customers, but rather making the instruments available to customers in a particular jurisdiction.

Another area of focus for regulators is the taxation of digital assets. The issue was brought before the German courts, which had to decide about the tax implications of renting virtual land. By way of introduction, virtual land is real estate created in a digital form hosted on a Web3 platform (the most common ones are Metaverse, Axie Infinity, Decentraland, The Sandbox, Somnium Space, Cryptovoxels, etc.).[28] The concept of virtual land became popular through video game platforms such as Second Life which started to monetize the digital space by allowing users to acquire different parts of land in a specific game.

Virtual land transactions raised the question of whether they could trigger any tax liability. The German courts were seized in July 2018 with a dispute between a virtual landlord and the German tax authorities.[29] The landlord (the plaintiff) bought land in the virtual world of Second Life, which he then rented to other Second Life users and received a monthly rent in Linden dollars, the currency of Second Life. The German courts had to take into account the following potential jurisdictions: the place where the claimant was based (Germany), where the economic value materialised (Germany), where the payment was made (potentially in various jurisdictions, depending on where the tenants of the virtual land were based), and the place where the provider of the game was based (United States). It is important to note here that the first instance court[30] and the second instance court were not aligned in their approach, which shows the difficulties in identifying the relevant criteria when assessing jurisdiction over a virtual land transaction.

After exchanging the Linden dollars for US dollars, the landlord received a notice from the German tax authorities. According to the tax authorities, renting virtual land constitutes a taxable digital service. The first instance court, the Cologne Finance Court (*Finanzgericht Köln*), held that the plaintiff primarily used the online platform to generate income by "renting" virtual land, and not necessarily for gaming purposes, therefore, it found the plaintiff liable to pay tax in Germany.

In November 2021, the German Federal Fiscal Court (*Bundesfinanzhof*) overturned the decision, and held that in-game transactions that are limited to mere participation in the game do not usually represent an economic activity. The court added that a taxable exchange of services can only be assumed when leaving the virtual world and entering into a "real" commercial transaction, namely when the Linden dollars were exchanged for US dollars. However, since the gaming operator's headquarters were located in the USA, the court found that the plaintiff's activity was not taxable in the Federal Republic of Germany.

The German Federal Fiscal Court took into account the following criteria when deciding if they had jurisdiction over the dispute:

"The plaintiff did not carry out the other service fictitiously provided to the gaming operator within the country.[31]
(...)
The fate under sales tax law when determining the place of performance does not depend on the content of the service, but rather on the personal characteristics of the person providing the service or the recipient of the service."
(emphasis added)[32]

The location of the fictitious service provided by the plaintiff to the gaming operator as an entrepreneur is therefore based on the place where the gaming operator operates its business. This is not located domestically, but in the USA, *where the game operator is based and also operates the servers for* [the] *program.*" (emphasis added).[33]

We note here that the German Federal Fiscal Court relied on a criterion that can be easy to identify (compared to the option of taking into account the place of payment, or the place where the servers are located), and which has a certain degree of permanence and can be verified by checking publicly available information (such as a national companies' registers).

4 Contractual Transactions

In general, in cross-border disputes, the competent court is the one where the defendant is domiciled. However, when it comes to contractual transactions, the competent court to hear the dispute may also be the court where the contractual obligation in question should have been performed or where the breach has occurred.[34] When it comes to applying the same logic to contracts dealing with emerging digital assets, the courts are faced with a difficult task.

In an NFT dispute before the High Court of Singapore, *Janesh s/o Rajkumar v Unknown Person) (Chefpierre)*,[35] the court was asked to freeze the NFT allegedly sold by the respondent. By way of background, an NFT investor who owned various tokens from the popular NFT collection 'Bored Ape Yacht Club' used one of their unique NFT's (BAYC No. 2162) as collateral to borrow Ethereum from a crypto lender, via NFTfi, a community platform functioning as an NFT-collateralised cryptocurrency lending marketplace.

According to the parties' agreement, "*at no point would the lender obtain ownership, nor any right to sell or dispose of the Bored Ape NFT*". The lender could only, at best, hold on to the Bored Ape NFT, pending repayment of the loan. However, the borrower became unable to repay its loan, and the lender decided to transfer the NFT to a personal Ethereum wallet and listed it for sale on OpenSea, a popular online NFT marketplace.

Given the risk of dissipation of the NFT, the borrower started court proceedings seeking a proprietary injunction prohibiting the defendant (the lender) from dealing in any way with the Bored Ape NFT. As in the cases mentioned above, the action was against a person unknown (acting under the pseudonym of *Chefpierre*). The claimant argued that, notwithstanding the fact that the domicile, residence and present location of the defendant was unknown, the Singapore court was the appropriate court to hear the application for the injunction on the basis that:

A There was sufficient nexus to Singapore. The claimant was a Singaporean citizen who carried on business from Singapore and owned property in Singapore. Further, he entered the transactions concerning the Bored Ape NFT in Singapore.

B Singapore was the forum *conveniens*. If the Singapore courts did not hear the case, there was no other appropriate forum. This was because the Bored Ape NFT existed as code stored on the Ethereum blockchain, which is essentially a decentralised network of ledgers maintained in computers around the world.

The main criterion taken into account by the Singapore court was that the claimant was located in Singapore and carried on his business there.

> "*In the present case, I was satisfied that the court had the jurisdiction to hear the present application. While the decentralised nature of blockchains may pose difficulties when it comes to establishing jurisdiction, to my mind, there had to be a court which had the jurisdiction to hear the dispute. In the present case, based on the available facts before me, that court was the Singapore court. The primary connecting factor was the fact that the claimant was located in Singapore, and carried on his business here.*"[36] (emphasis added)

This case is particularly interesting because the court acknowledged the difficulties in establishing jurisdiction given the decentralised nature of the blockchain technology used in creating and storing the NFT. At the same time, the court relied solely on the place where the claimant was based, not the legal system where the breach took place, or where the defendant was based. The most important factor was that there had to be a court which would decide over the dispute, and in lack of a better choice, the court selected the place where the claimant was based.

5 Soft Law

The court cases analysed above reveal various ways to deal with jurisdictional issues, depending on the state and the nature of the dispute. However, when it comes to regulations and international instruments, unfortunately, there is limited guidance at an international level on which criteria the courts should employ when dealing with issues of cross-border emerging digital assets disputes. This is an area under development. Nevertheless, one notable example is the UNIDROIT Principles on Digital Assets on Private Law 2023 ('UNIDROIT Principles'). It is important to note here, that the UNIDROIT Principles do not have a mandatory force. Rather they represent soft law (having a non-binding nature), and their focus does not cover jurisdictional issues but rather applicable law.[37,38] Being mindful that the issue of jurisdiction is tied to procedural law and the issue of applicable law is related to substantive law, the UNIDROIT Principles, while not directly linked to conflict of jurisdiction, may serve as guidance for the courts when deciding whether they have jurisdiction or not over a specific digital asset dispute, or which criteria to take into account when more than one state is potentially relevant to the dispute.

Principle No. 5 (Applicable law) lists the following hierarchical criteria to be taken into account by the courts when trying to determine the applicable law to digital assets disputes:

- Proprietary issues in respect of a digital asset are to be governed by:
  - A the domestic law of the State expressly specified in the digital asset, if not specified, then by

B the domestic law of the State expressly specified in the system on which the digital asset is recorded, if not specified, then
C in relation to a digital asset of which there is an issuer, the domestic law of the State where the issuer has its statutory seat, provided that its statutory seat is readily ascertainable by the public; or
D If none of the situations applies:

- Option A:
  - Those aspects or provisions law of the forum State as specified by that State; or
  - Those principles specified by the forum State; or
  - The law applicable by virtue of the rules of private international law of the forum State.

- Option B:
  - Those Principles as specified by the forum State;
  - The law applicable by virtue of the rules of private international law of the forum State.

Paragraph 2 of Principle No. 5 clarifies what is understood by proprietary issues, namely acquisition and disposition of digital assets (which are always considered a matter of law). Further, the Principles specify that: "*in determining whether the applicable law is specified in a digital asset, or in a system on which the digital asset is recorded, consideration should be given to records attached to, or associated with, the digital asset, or the system, if such records are readily available for review by persons dealing with the relevant digital asset*." The UNIDROIT Principles also take into account an implied choice of applicable law,namely the applicability of the hierarchical points listed in Principle No. 5, paragraph (1) a, b, and c: when a person transfers, acquires, or has any other dealings with a digital asset.

The drafters of the UNIDROIT Principles also took into account the changes that might appear in time to the applicable law. In order to avoid potential conflict with subsequent laws, it is mentioned explicitly that proprietary rights in the digital asset that have been established before the change in law are not affected by it.

Finally, the UNIDROIT Principles also define the meaning of 'issuer' referred to in paragraph (1)(c) of Principle No. 5, as a legal person:

"(i)who put the digital asset, or digital assets of the same description, in the stream of commerce for value; and (ii) who, in a way that is readily ascertainable by the public, (A) identifies itself as a named person; (B) identifies its statutory seat; and (C) identifies itself as the person who put the digital asset, or digital assets of the same description, into the stream of commerce for value."

Principle 5 is of particular importance for UNIDROIT which joined forces with HCCH to develop further the points discussed in Principle 5 and give more detailed guidance to policymakers regarding applicable law in cross-border holdings and transfers of digital assets and tokens. The HCCH-UNIDROIT Joint Project on Law Applicable to Cross-Border Holdings and Transfers of Digital Assets and Tokens will focus on the applicable law in the absence of an explicit choice of law by the parties; weaker party protection in transactions relating to digital assets and tokens; connecting factors that would have an impact on the law applicable to cross-border holdings and transfers of digital assets and tokens; and the law applicable to linked assets. Currently, there is no information on whether the research will extend to conflict of jurisdictions.[39] The guidance prepared by UNIDROIT is a very well-researched paper, accompanied by a detailed commentary on how the principles apply and what are their limitations.

On the same topic, at a national level it is worth following the work of the Law Commission of England and Wales on preparing the research paper *Digital assets: which court, which law?* (previously, named Conflict of Laws and Emerging Technologies), which is currently in the consultation phase.[40] As put by the Law Commission "*Digital assets (especially when combined with distributed ledger technology) have the potential to generate multiple (and potentially inconsistent) assertions of applicable law and jurisdiction. This area of law is presently uncertain and can often be difficult to apply*." The scope is to analyse the current rules on private international law as they may apply in the digital context and, where appropriate, make recommendations to ensure that the law in this area remains relevant and up to date.

6 Conclusion

As shown in the cases analysed above, the courts tend to retain jurisdiction even if the dispute does not fall into a 'classical' concept or a 'traditional' pattern, as long there is a certain link between the elements of the dispute (the plaintiff, the respondent, the place where the damage occurred etc.) with the state where the court is based. However, the criteria taken into account are tenuous and not always predictable. In some instances, the courts will retain jurisdiction in lack of a better option, as a sort of court of 'last resort'. In order to avoid forum shopping and ensure predictability of such disputes, there is, therefore, a need to tackle at an international level the issues of conflict of jurisdictions in the context of emerging digital assets disputes.

Notes

1 England & Wales Law Commission on Law, "Digital Assets: Final Report" p. ix.
2 https://lawcom.gov.UK/new-recommendations-for-reform-and-development-of-the-law-on-digital-assets-to-secure-UKS-position-as-global-crypto-hub/.
3 UNIDROIT Principles on Digital Assets and Private Law, 2023, p. 16, https://www.unidroit.org/wp-content/uploads/2023/04/C.D.-102-6-Principles-on-Digital-Assets-and-Private-Law.pdf.
4 Allen, J.G., Rauchs, M., Blandin, A. & Bear, K. "Legal and Regulatory Considerations for Digital Assets" Cambridge Centre for Alternative Finance (2020). It is important to note that this definition comes with the following disclaimer "It should be noted that a considerable number of digital assets that are marketed or portrayed as "cryptoassets" do not meet this definition. A prominent example would be XRP, issued by Ripple Labs which, consequently, would be classified as another type of asset", https://www.jbs.cam.ac.UK/wp-content/uploads/2020/10/2020-ccaf-legal-regulatory-considerations-report.pdf.
5 Vadgama, Nikhil. "Enterprise Digital Assets" UCL Centre for Blockchain Technologies (2022) p.7. https://discovery.ucl.ac.UK/id/eprint/10160678/1/Enterprise_Digital_Assets_UCLCBT.pdf.
6 England & Wales Law Commission on Law, "Digital Assets: Final Report". The term digital asset "captures a huge variety of things including digital files, digital records, email accounts, domain names, in-game digital assets, digital carbon credits, crypto-tokens and NFTS. The technology used to create or manifest those digital assets is not the same. Nor are the characteristics or features of those digital assets".
7 Typically, digital assets are referred to as tokens, which are broken down into payment (digital currencies), utility (including governance and access) and security tokens (including equity, debt and other financial assets). In the con-

text of the enterprise setting, digital asset use cases can relate to tracking of information assets, utilising tokens for payments as stablecoins and transactionally(internally), accessing products and services, paying for them, raising financing, and the tokenised representation of assets.

8 One of the first cases that became public in the UK was Vorotyntseva v MONEY-4 Ltd (t/a nebeus.com) & Ors [2018] EWHC 2596.

9 By way of example, in the USA, in September 2023, there were over 600 pending litigations and regulatory cases involving digital assets. It is estimated that, as of October 2022, more than 200 individual and class action lawsuits had been filed in the USA, which represented a growth of nearly 50% compared to 2020, see https://www.yalejreg.com/bulletin/crypto-litigation-an-empirical-view/.

10 See AA v Persons Unknown [2019] EWHC 3556 (Comm); Vorotyntseva v MONEY-4 Ltd (t/a nebeus.com) & Ors [2018] EWHC 2596 (Ch); B2C2 Ltd v Quoine Pte Ltd [2019] SGHC(I) 03; Robertson v Persons Unknown, [2019] EWHC unreported; Ruscoe v Cryptopia Limited (in liquidation), CIV-2019-409-000544 [2020] NZHC 728; Judgement of the Amsterdam court from 20 March 2018, case ECLI:NL:RBAMS:2018:869; Judgment of the Ninth Arbitrazh Court of Appeal, 15 May 2018, in case No. A40-124668/2017, UK Jurisdiction Task Force's Legal Statement on Cryptoassets and Smart Contracts "cryptoassets have all of the indicia of property" and "the novel or distinctive features possessed by some cryptoassets – intangibility, cryptographic authentication, use of a distributed transaction ledger decentralisation, rule by consensus – do not disqualify them from being property", https://35z8e83m1ih83drye28009d1-wpengine.netdna-ssl.com/wp-content/uploads/2019/11/6.6056_JO_Cryptocurrencies_Statement_FINAL_WEB_111119-1.pdf.

11 Hazard Jr, Geoffrey C. "A General Theory of State-Court Jurisdiction" The Supreme Court Review 1965 (1965): 241-288.

12 Ibáñez, Luis-Daniel, Hoffman, Michał R. & Choudhry, Taufiq. "Blockchains and Digital Assets" EU Blockchain Observatory & Forum (2018) https://blockchain-observatory.ec.europa.eu/document/download/d0e0d496-debe-4018-9a0f-9c6fa90b406a_en?filename=blockchains_and_digital_assets_june_version.pdf.

13 See footnote 8 above.

14 Crypto as security under USA law: Sec. & Exch. Comm'n v. LBRY, Inc., 21-cv-260-PB (D.N.H. Nov. 7, 2022; Securities and Exchange Commission v. Telegram Group Inc. et al, No. 1:2019cv09439 – Document 227 (S.D.N.Y. 2020); Balestra v. ATBCOIN LLC, 380 F. Supp. 3d 340, 354 (S.D.N.Y. 2019).

15 Crypto as means of payment under Estonian law: https://www.njordlaw.com/supreme-court-estonias-decision-bitcoin.

16 McMorrow, Ryan & Kinder, Tabby. "Cryptocurrency Exchanges Start Cutting Off Chinese Users" Financial Times (2021) https://www.ft.com/content/9c42c660-7e80-47c2-8b3b-3398c6a22eaf.

17 UNIDROIT Principles on Digital Assets and Private Law, adopted by the UNIDROIT Governing Council at its 102nd session (10-12 May 2023) https://www.unidroit.org/wp-content/uploads/2023/04/C.D.-102-6-Principles-on-Digital-Assets-and-Private-Law.pdf.

18 Cane, Peter. The Anatomy of Tort Law Bloomsbury Publishing (1997).
19 Ion Sciences Ltd v Persons Unknown and others (unreported), 21 December 2020 (Commercial Court), https://UK.practicallaw.thomsonreuters.com/Link/Document/Blob/I5438c9dc7c3911ebbea4fodc9fb69570.pdf.
20 *Ibid*. para. 21 "(...) a Bankers Trust order might be one where there can be service out of the jurisdiction in exceptional circumstances, and that those exceptional circumstances might include cases of hot pursuit. That is this type of case. As I say, I consider that there is a good arguable case that there is a head of jurisdiction under the necessary or proper party gateway. I should also say that it seems to me that there is a good arguable case that the Bankers Trust case can be said to relate wholly or principally to property within the jurisdiction on the basis of the argument which I have already identified which is that the bitcoin are or were here and that the lex situs is where the owner resides or is domiciled. Accordingly, I consider that there is a basis on which jurisdiction can be established."
21 Osbourne v Person Unknown and another [2022] EWHC 1021 (Comm).
22 *Ibid*. "53. In those circumstances, the only other question I have to ask myself, is whether or not England is clearly and distinctly the more appropriate place for the claim against Ozone to be resolved. This is a much more difficult point because as I have explained, Ozone has no presence in the English jurisdiction, and therefore the ability of the Court to enforce any order it makes against Ozone is, by definition, a limited one, and the Court will decline to make orders which are, by their nature, futile.
54. I have hesitated long and hard on this basis about making the order sought, because it will be punitively expensive for the claimant to police. It is likely to generate significant litigation if Ozone engage with the process at all; and there is a real prospect that Ozone will not engage with the process, and therefore, the order will ultimately turn out to be pointless.
55. As I have said, I have hesitated long and hard about this but consistent with the approach which had been adopted in earlier cases, and on the assumption that Ozone would wish to cooperate with the English Courts for the purposes of supplying information which enables."
23 Namely, if it meets the following test (Howey Test): "(a) an investment of money (b) in a common enterprise (c) with profits (d) to come solely from the efforts of others. If that test was satisfied, it is 'immaterial whether the enterprise is speculative or non-speculative, or whether there is a sale of property with or without intrinsic value."
24 See here list of SEC enforcement actions regarding digital assets: https://www.sec.gov/spotlight/cybersecurity-enforcement-actions.
25 Namely, instruments delivering assets in the future at some predetermined price.
26 See here list of CFTC enforcement actions regarding digital assets: https://www.cftc.gov/PressRoom/PressReleases/8822-23.
27 CFTC v. Laino Group Limited d/b/a Paxforex, 20-cv-03317 (S.D. Tex. June 7, 2021)
28 https://en.wikipedia.org/wiki/Metaverse; Duan, Haihan, et al. "Metaverse for social good: A university campus prototype." Proceedings of the 29th ACM international conference on multimedia (2021).

29 German Federal Fiscal Court (Bundesfinanzhof), VR 38/19, ECLI:DE:BFH:2021:U.181121.VR-38.19.0, https://www.bundesfinanzhof.de/de/entscheidung/entscheidungen-online/detail/STRE202210041.
30 Cologne Finance Court, 8 K 1565/18 https://www.justiz.nrw.de/nrwe/fgs/koeln/j2019/8_K_5-65_18_Urteil_20190813.html.
31 German Federal Fiscal Court (Bundesfinanzhof), V R 38/19, ECLI:DE:BFH:2021:U.181121.VR- 38.19.0, para. 55.
32 *Ibid*. para. 57.
33 *Ibid*. para. 58.
34 See for example, Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast).
35 Janesh s/o Rajkumar v Unknown Person (Chefpierre) [2022] SGHC 264, https://www.elitigation.sg/gd/s/2022_SGHC_264.
36 *Ibid*.
37 "Principle 5 (Applicable law) concerns only choice-of-law issues and does not address the question of the jurisdiction of any tribunal over a party or the subject matter at issue."
38 For a detailed analysis on applicable law, please see chapter 5.
39 https://www.unidroit.org/wp-content/uploads/2023/05/C.D.-102-12-Proposal-for-Joint-Work-HCCH-UNIDROIT.pdf.
40 https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2024/02/Conflicts-full-document-FINAL-pdf-1.pdf.