

# Are Bitcoins Property?

An English law analysis of the creation and transfer of property rights in  
bitcoin

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# Introduction / Overview

- **Significance**
- **Unique Proprietary features of bitcoin**
- **English Property Law**
  - Types of property
  - Exercising property rights
  - Methods of transfer
- **Bitcoins Place in English Property Law**
- **Conclusion**

# Why property law matters

- **Growth of virtual currencies**
- **Application of Blockchain technology**
- **Transfer of ownership**
  - At what point does ownership / risk change hands
- **Insolvency & Intermediation**
  - EG: Mt Gox judgment (Bitcoin not capable of ownership)
  - Law of trusts
  - Intermediaries
- **Protections of rights**
  - Right to use
  - Rights to dispose of
  - Rights to vindicate
  - Right to encumber

# Why Bitcoin is unique

- **Decentralized**

- Open source record of ownership
- Entirely intangible but not processed by a central entity.
- Triple entry bookkeeping

- **Multiple uses**

- **Public and private key cryptography**

- Control exercised very differently to any other asset
- Record of ownership produced by the mining process

- **Exchange and control**

- Wallets / exchanges
- Smart contracts

# Types of property in English law

- **Real vs personal property**

- **Personal property**

- Residual in nature - everything that is not real property (Bridge 2002: 1)
  - Interests in **tangible** assets - '*choses in possession*'
  - Interests in **intangible** assets - '*choses in action.*'

- **Choses in action**

- *“a chose in action describes all personal rights of property which can only be claimed or enforced by way of action, and not taking physical possession.”* (Smith 2007: 24)
  - The (intangible) asset itself;
  - The rights or interest that arise in respect of that asset.

- Smith (2007: 37) provides a classification of '*choses in action*' under seven different headings.

## Nature of the asset to which the rights relate

### *Property arising out of a claim*

- Debts
- Shares
- Leases over land
- Rights under a contract
- Cause of action

### *Property in which rights are created*

- Intellectual property
- Equitable rights

# *Transfer of Property Rights*

- **Assignment**

- when rights in an asset are assigned to another by agreement
- Rights that are transferred not the asset itself
- EG: assignment of rights under a debt.

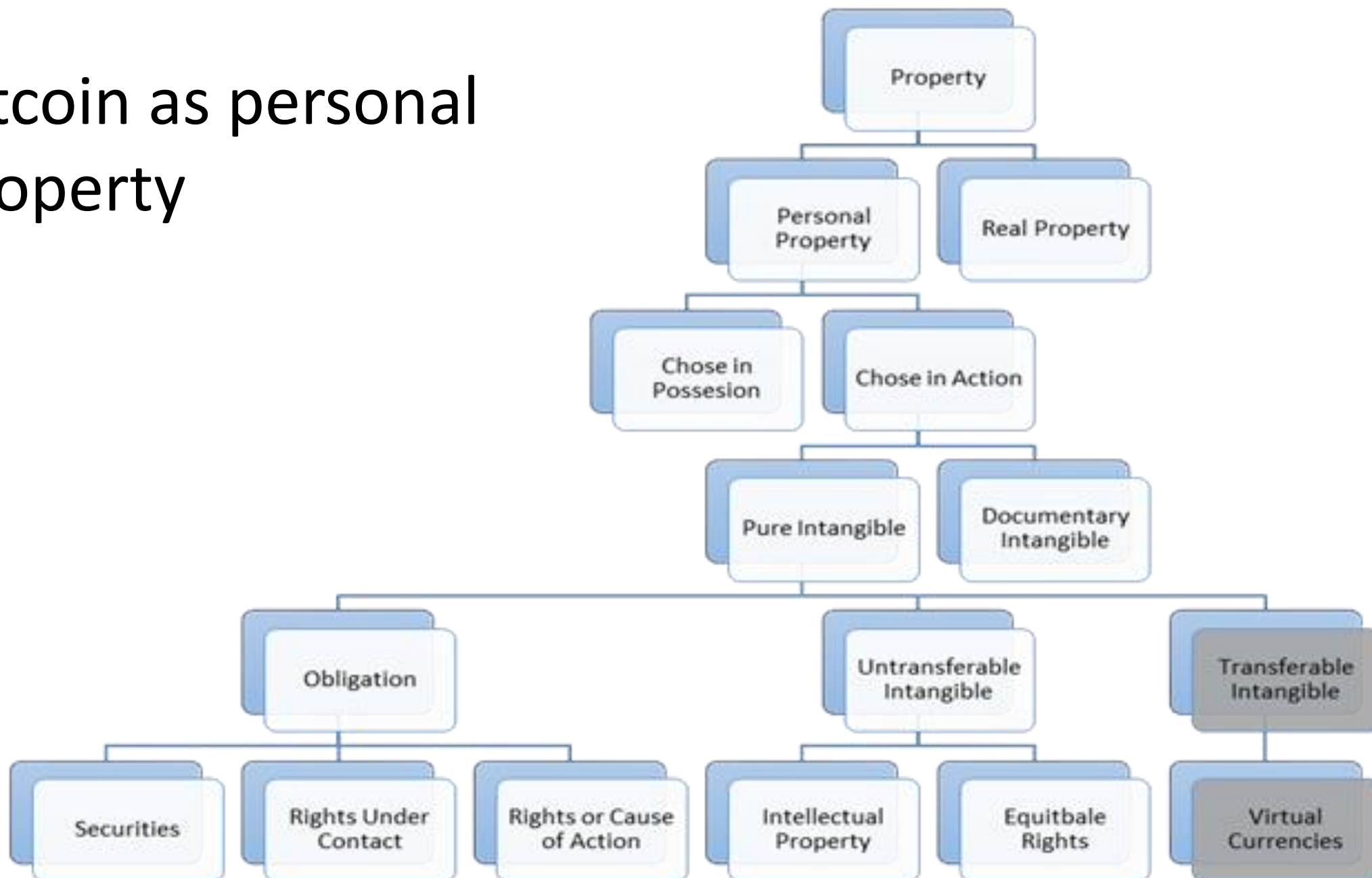
- **Novation**

- extinguishment of an existing agreement between two parties and the conclusion of a new contract (on the same terms) with a third party.
- Again, the transfer of rights (not the asset) by means of concluding a new contract.

- **Negotiation:**
  - special types of instruments (Negotiable instruments) – given effect by statute
- **Delivery:**
  - surrendering of control over tangible assets
  - Only applies to tangibles
- **Transfer by register:**
  - how ownership of shares is transferred.
  - Set of instructions passed to a central registry which then changes the registered owner: CREST in the UK Clearstream for the rest of Europe
- **Credit transfers:**
  - transfer of money by means of issuing an instruction to debit one balance and credit another.



# Bitcoin as personal property



# Bitcoin as Property

- **(1) Residual nature of personal property**
  - Personal property is intended to capture all forms of property that are not real property.
- **(2) Lex mercatoria**
  - Bitcoin is treated as property by commercial parties
  - The lex mercatoria is a recognised source of common law. EG: negotiable instruments.
- **(3) Comparison to other recognized forms of property**
  - Bitcoins are more amenable to a description as property than a number of other forms of property. EG: tort claims, Rights under a contract, equitable rights
- **(4) Not just limited to bitcoin**
  - Other assets exchanged by means of the blockchain must be understood as a form of property

### (3) Understanding the creation and transfer of property rights in bitcoin

- Adapting the common law principles relevant to the ownership and transfer of chattels
- Perfectly consistent with the unique features of bitcoin laid out above
- The Bitcoin protocol provides all the information necessary to determine ownership disputes through established property law
- English law has proved flexible in accommodating the changing nature of assets in the securities market. The same should be applied to bitcoin.

- Need to understand the transfer system as a whole and the means by which bitcoins are exchanged.
  - Nature of the blockchain
  - Public and private keys
  - Wallets / exchanges
- Conduct, intention and agreement between the parties
- transfer of the coins can be analyzed as a form of “online delivery”.
- Delivery by giving the transferee access to the goods.
  - EG: constructive delivery by handing over a key giving access to goods.
- The reason delivery and possession have not been previously been appropriate in respect of intangibles
  - the intangibles themselves are not capable of transfer; or
  - they are personal claims and better analysed as a transfer of obligations

# Conclusion

- Form of intangible property generated by a decentralised settlement system which allows users to transact on a purely peer-to-peer basis.
  - they do not arise out of a personal right;
  - they are entirely intangible; and
  - they are transferable from person to person without the use of a third party intermediary.
- does not fit comfortably within the current property law framework.
- Sought to characterize it as a unique *chose in action* amenable to both (online) possession and delivery
- system provides all the information necessary to determine title disputes in this manner.