

Three Months On: The Judicial Application of the Property (Digital Assets etc) Act 2025

By Michael Vora

3PB Barristers

The Property (Digital Assets etc) Act 2025 came into force in December 2025, marking a significant development in the treatment of digital assets under English law. Three months into its operation, the first judicial decisions applying the Act have begun to shed light on how courts are interpreting and deploying the new statutory framework.

This article examines the legal position prior to the Act, the nature of its intervention, and the emerging case law, with a particular focus on how courts are approaching the identification of digital assets as personal property and the consequences that flow from that recognition.

The Position Pre-Act

English civil law had, for well over a century, proceeded on the basis that all personal property falls into one of two categories, that is, either:

1. A chose in possession: a tangible, physical asset capable of physical delivery and possession.
2. A chose in action: an intangible right enforceable only through legal proceedings (e.g. such as a debt or a contractual entitlement).

These two categories were understood to be exhaustive, in that personal property must be one or the other, with no room for a third category.¹

This position was further characterised by the *Ainsworth criteria*², which set out the principles by which a right or interest may be recognised as proprietary in nature. Namely, it must be definable, identifiable by third parties, capable of assumption by third parties, and possess some degree of permanence or stability.

¹ Colonial Bank v. Whinney [1885] 30 Ch.D 261

² National Provincial Bank Ltd v Ainsworth [1965] AC 1175

In the context of digital assets, it is noteworthy that a retrospective analysis of these criteria affirms that there is no specific requirement of physicality, a fact which proved decisive in the later recognition of digital assets as the subject of proprietary rights.

Alongside the characterisation of such assets, however, a separate but related hurdle for digital assets was the unequivocal authority handed down by the House of Lords that the tort of conversion (i.e. the wrongful interference with a chattel which is inconsistent with another's right to immediate possession) applied only to tangible assets³.

In the practical sense, therefore, even if a Claimant were to satisfy the Court that the digital asset met the Ainsworth criteria and its status as property was accepted, the *OBG* judgment appeared to imply that the primary tort protecting property from interference was unavailable.

As a final precursor to the Act itself, one cannot ignore the relevance of the Court of Appeal's judgment in *Tulip*⁴. Although the central issue in that case concerned whether Bitcoin developers owe fiduciary duties to the owners of Bitcoin, the court also directly grappled with the proprietary status of cryptoassets, and three analytical concepts that emerged from the judgment provided the intellectual scaffolding around which the subsequent Act was constructed:

1. **The Rivalry test:** an asset is considered 'rivalrous' if one person's use or ownership of it excludes the same use or ownership by another.
2. **Conceptual existence:** what constitutes the property in question is the functional asset itself, that is, the unit of value recognised by the relevant network, and not the underlying code or data through which it is represented on a blockchain. For example, an individual that holds one Bitcoin does not hold the infrastructure around the asset, such as the entry on the database or the cryptographic key providing access to the Bitcoin. Instead, the unit of one Bitcoin is the asset which exists independently of the surrounding framework.
3. **The Ideational Object:** this describes an asset that exists in the realm of ideas and social recognition rather than in physical space. One that is neither a tangible chattel nor a right enforceable against an identified person, but which nonetheless possesses sufficient definition and stability to be recognised as property. For example, an in-game token has no physical form or enforceable rights outside the game itself; however, within

3 *OBG Ltd v Allan* [2008] AC 1

4 *Tulip Trading Ltd v Bitcoin Association for BSV* [2023] EWCA Civ 83

the confines of the game, the token is universally recognised as having a measurable value, i.e. a value that exists in a shared conceptual space through the collective recognition of users.

The Act

Premised upon the above developments, the Act's central intervention is relatively straightforward: it confirms that **a thing is not prevented from being the object of personal property rights merely because it is neither a chose in possession nor a chose in action.**

Rather than define a third category of personal property, the Act opts to simply remove the binary classification obstacle created by *Whinney*. By deliberate default, therefore, the Act created space for an undefined 'third category', which was considered best left to the Courts to populate by way of judicial development.

This fluid approach was preferred to a codified definition as it equips the Courts with the discretionary flexibility required to adapt to and keep pace with the rapidly evolving digital asset space.

The speed at which these issues were already being brought before the courts is illustrated by the timing of *D'Aloia*⁵, which came before the Chancery Division in September 2024, just one day after the Property (Digital Assets etc) Bill was introduced to the House of Lords on 11 September 2024.

Notwithstanding its pending enactment, the Court directly references the draft Bill in its deliberations and, therefore, the *D'Aloia* judgment represents the first concrete judicial demonstration of the practical implementation of the Act.

Applying the *Ainsworth* criteria as its starting point, the court affirmed that 'Tether USDT' (i.e. a form of cryptocurrency) does constitute a form of property that falls squarely within the third category created by the Act.

The court went further, drawing on the concepts developed in *Tulip* to confirm that Tether USDT is both rivalrous (i.e. in that one person's holding of it excludes the same holding by another) and conceptually existent, (i.e. the asset's identity resides in the unit of value

⁵ *D'Aloia v Persons Unknown* [2024] EWHC 2342 (Ch)

recognised by the network, distinct from the underlying code through which it is represented).

This represented the first coherent judicial contemplation of the provisions of the Act, notwithstanding that the statute's wording was technically still in its final draft stage at the time of consideration. Whilst the claim ultimately failed, attributed primarily to tracing difficulties, the Court's methodology provides an important blueprint for the practical application of the Act to digital assets, in this case, cryptocurrency.

Post-Act Developments

The pace at which the courts have been required to engage with the practical implications of the Act is evident in two significant decisions that have already followed, which together illuminate the current limitations of the statutory intervention and the prospective trajectory of judicial interpretation.

In the criminal matter of *Lakeman*⁶, the Court of Appeal was required to determine whether 'gold pieces' accumulated within the online game RuneScape constitute 'property' within the meaning of *s.4 of the Theft Act 1968*. Whilst the Court's focus was primarily on the criminal threshold, *paragraph 86* of the judgment confirms as follows:

“Moreover, they [in-game gold pieces] fulfil each of the Ainsworth criteria and the Law Commission definition of rivalrousness, although we emphasise again that we are not saying that fulfilment of all those private law criteria is necessary in this criminal context.”

Similar to *D'Aloia*, the court also expressly endorsed the concept of the ideational object in finding that the in-game currency has a conceptual existence recognised by the relevant community of users that was sustained by the game's infrastructure; and within the context of their considerations, that was sufficient for the purposes of the 1968 Act.

Crucially, from a civil perspective, the court in *Lakeman* explicitly considered the Digital Assets Act at *paragraphs 80 to 81* of the judgment, confirming that in-game assets are, in principle, within the scope of its framework and that Parliament's approach was consistent with the court's own analysis. It was careful, however, to confine its conclusions in this matter exclusively to the criminal context. Consequently, the civil property status of in-game

⁶ *R v Lakeman* [2026] EWCA Crim 4

assets, and the specific question of whether they fall within the Act's 'third category' for the purposes of civil proceedings remains to be determined on the facts of individual cases.

However, the most recent judgment delivered on 10 March 2026 in the matter of *Yuen*⁷ serves as a sobering reminder of the current limitations of the Act's framework. The Claimant alleged that his former wife had misappropriated 2,323.28423347 Bitcoin from him and sought to pursue tortious claims in conversion and trespass to goods.

Whilst recognition of Bitcoin as third-category personal property under the Act proved unproblematic, in applying the well-trodden principles established in the *OBG* judgment (as set out above), Cotter J struck out both claims on the grounds that conversion and trespass to goods are remedies available only in respect of tangible property. Bitcoin, therefore, notwithstanding its status as 'third category' property, remains an intangible asset and falls outside the scope of such remedies.

Whilst the *OBG* principles are well established, this decision in *Yuen* clearly illuminates the difficulties in applying those principles coherently to the digital asset space. The wider challenge for the Court, therefore, now seems to be how it goes about remedying the misappropriation of an individual's proprietary interest in a digital asset, through an appropriate cause of action.

It follows that whilst a claimant whose digital assets have been misappropriated now has a secure proprietary foundation from which to seek relief, the classical torts of interference with goods appear to remain exclusive to tangible property. The appropriate causes of action for interference with third-category property are likely to lie in unjust enrichment, breach of trust, or proprietary and personal restitution; however, what remains clear is that mapping the full remedial landscape for digital asset disputes remains, at this early stage, very much a work in progress for the Courts.

The Future Challenges

Three months on, the Act has accomplished the essential task for which it was designed: it has removed the *Whinney* constraint and confirmed a legal framework within which digital assets can be recognised as property.

The early case law demonstrates the breadth of the statutory framework's application, from conventional cryptoassets to, at least in principle, in-game currency. Equally, such case law

⁷ *Yuen v Li* [2026] EWHC 532 (KB)

identifies the limitations of the current provisions, with the unavailability of tangible property torts seemingly paramount. In light of the current pace of litigation in this area, there is no doubt that the Courts will, in the short term, be required to wrestle with a multitude of questions that arise from the recognition of digital assets as property, including, but not limited to the criteria by which novel assets will be admitted to this third category and the mechanism by which such assets can be traced. Practitioners, therefore, will be required to be mindful of the evolving body of case law on this topic, whilst also remaining receptive to the developing remedial framework and, from a broader perspective, the potential mechanisms of cross-jurisdictional enforcement.

This document is not intended to constitute and should not be used as a substitute for legal advice on any specific matter. No liability for the accuracy of the content of this document, or the consequences of relying on it, is assumed by the author. If you seek further information, please contact the 3PB clerking team on sam.collins@3pb.co.uk | matthew.scanlan@3pb.co.uk | georgia.coleyshaw@3pb.co.uk or call 0121 289 4333 | 020 7583 8055.

23 March 2026



Michael Vora

Barrister

3PB Barristers

michael.vora@3pb.co.uk

0121 289 4333

3pb.co.uk