

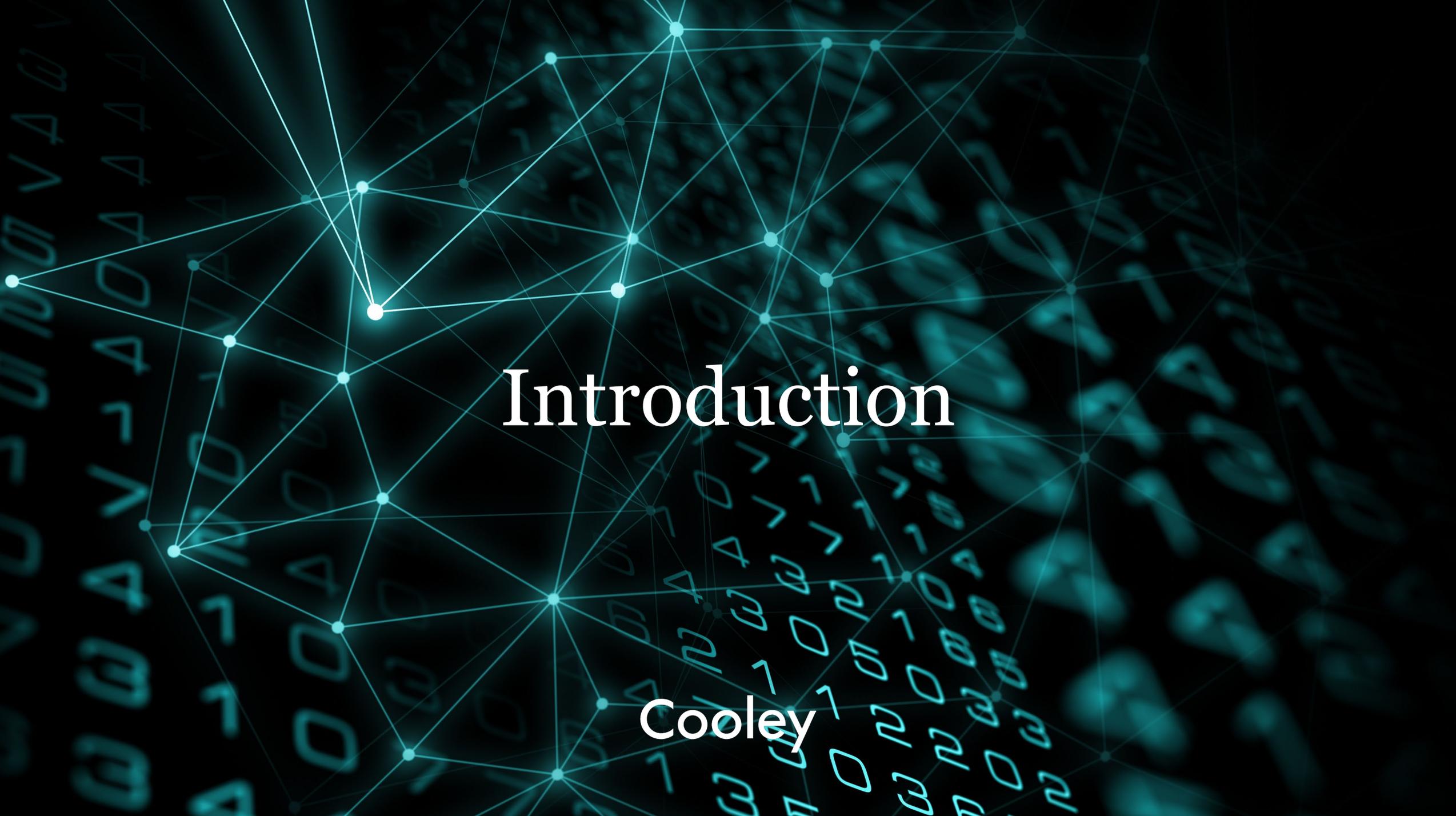
April 2025

On the Record: An Update on Key Issues in Crypto Disputes

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Introduction

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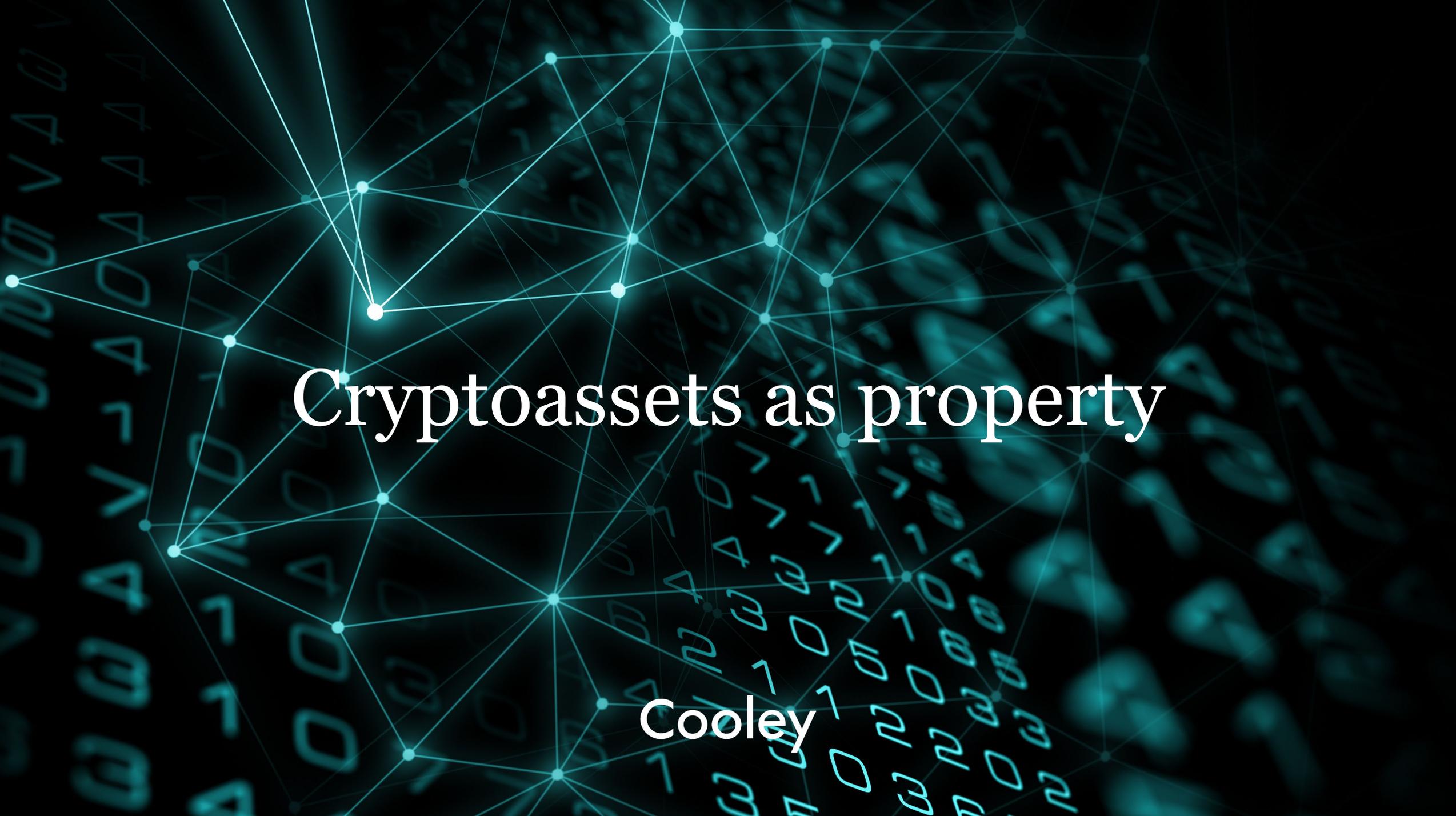
Increase in volume of crypto disputes

- consumer claims based on allegations of
 - breaches of consumer rights
 - outages
 - inappropriate financial promotions
 - mis-selling
- consumer challenges to arbitration clauses
- cases arising from fraud, including claims that exchanges are liable for third party fraud
- duties of care owed by developers
- contractual disputes, commercial arrangements
- IP disputes, skewed by cases involving Craig Wright



Today's Agenda

1. Cryptoassets as property
2. Location of cryptoassets
3. Duty of care – the Tulip case
4. The D'Aloia case
5. Guidance on tracing crypto
6. Formulation of claims
7. Future formulations – what to expect
8. Consumer arbitration clauses
9. Class action risk

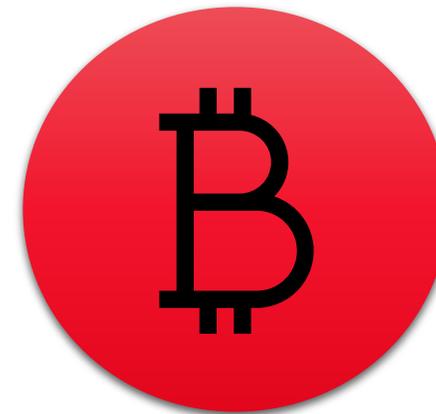


Cryptoassets as property

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Are cryptoassets property?

- Two traditional categories:
 - Things in action
 - Things in possession
- Cryptoassets do not neatly fall into one of these two categories.
- UKJT's Legal Statement on cryptoassets and smart contracts – cryptoassets meet the test in *National and Provincial Bank v Ainsworth*
- Several interim decisions have held that there is a good arguable case that cryptoassets are property



Confirmation by the High Court

- *D'Aloia v Persons Unknown Category A & Others* judgment following contested trial
- Cryptoassets are property:
 - Broad recognition in authorities & Law Commission's report that cryptoassets attract property rights
 - Cryptoassets are "rivalrous" (ownership by one person prevents ownership by another)
 - Cryptoassets are not merely data but the combination of data and transactional functionalities related to it
 - Cryptoassets exist as something outside the minds of their users
- While D'Aloia focused on USDT, the rationale extends to cryptoassets more broadly

Legislation to confirm that cryptoassets are property

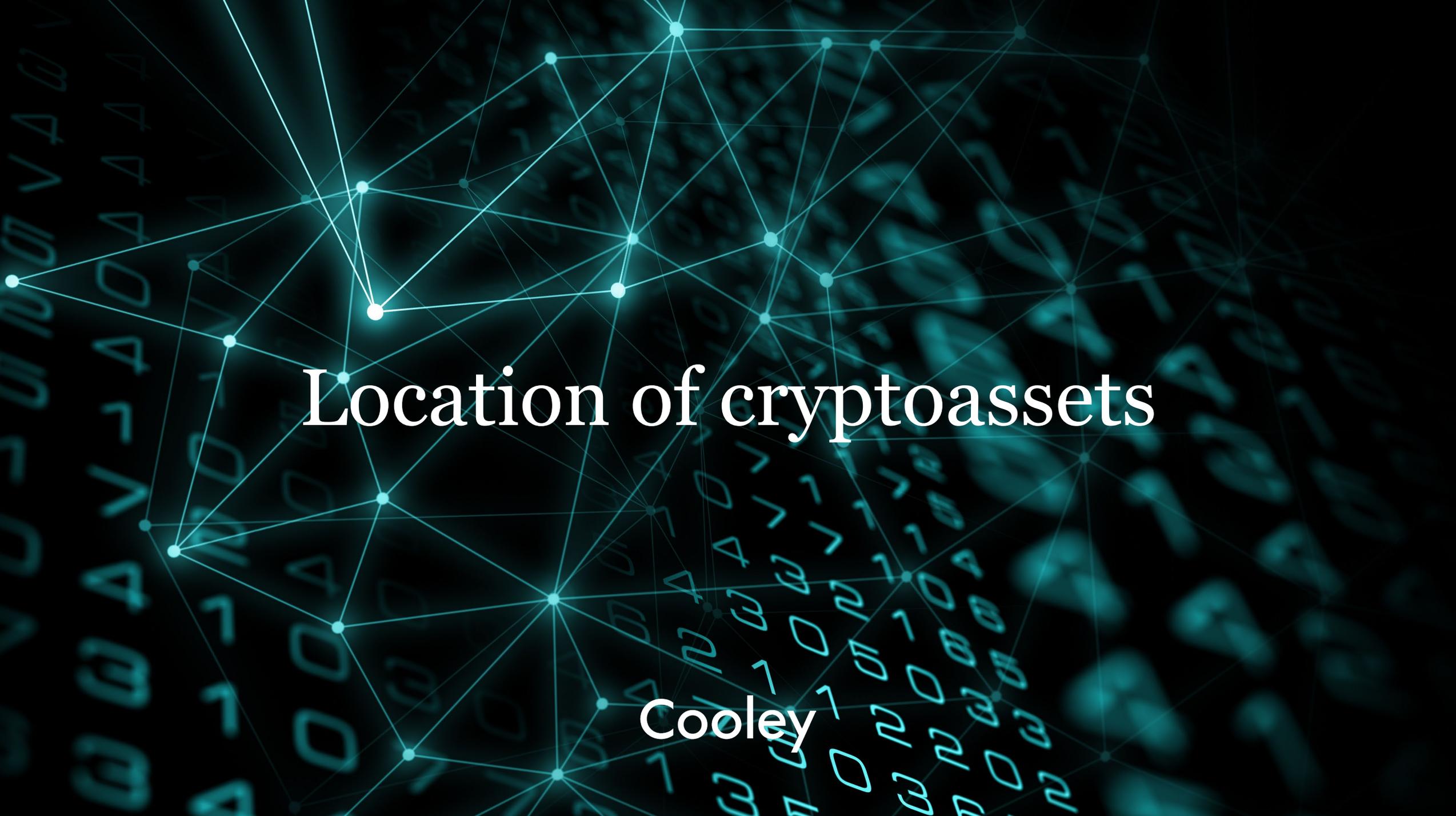
Press release

New bill introduced in Parliament to clarify crypto's legal status

Tech-savvy owners of Bitcoin and other digital assets will benefit from greater legal protection thanks to an important clarification to the law.

- Bitcoin and other digital assets can be considered personal property under new draft law introduced in Parliament today (11 September 2024)
- Owners to benefit from increased legal protection
- Changes will keep English and Welsh law at the forefront of the global tech industry

- The Property (Digital Assets etc) Bill
- Introduced on 11 September 2024
- Response to Law Commission's Final Report – 'third category'
- Currently at report stage



Location of cryptoassets

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Residence vs Domicile

- Domicile = place of incorporation (Seychelles)
- Residence = where a company's central management and control is exercised.
- *Tulip Trading Limited v Bitcoin Association of BSV et al* decided that residence was the determining factor of location (and whilst not strictly relevant to the appeal, the Court of Appeal Judge agreed with this approach).
- Factors in determining “residence” include: an assessment of whether the company has any active business and where that is carried out, where its books and records are held, if it has filed any accounts (and where).
- Inactivity can be enough to show control and therefore residence.



**Law
Commission**
Reforming the law

Digital assets and electronic trade documents in private international law

Reviewing how private international law operates in the context of electronic trade documents and digital assets.

Next steps

We have since published FAQ documents with more detail on the operation of private international law in the context of electronic trade documents and digital assets respectively. We are now working on a consultation paper to be published in the first half of 2025.

The background features a complex network of glowing blue nodes and lines, resembling a molecular structure or a data network. The nodes are small circles, and the lines are thin, connecting the nodes in a web-like pattern. The overall color scheme is dark blue and black, with the glowing elements providing a bright contrast. Faint, larger-scale mathematical symbols and patterns are visible in the background, adding a sense of depth and complexity.

Duty of care

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Tulip Trading Ltd v Bitcoin Association for BSV et al

- After falling victim to fraud that resulted in the loss of bitcoin of over £3 billion, TTL sought a declaration that the developers owed a fiduciary and/or tortious duty of care to assist TTL in regaining control of its lost asset



Was there a tortious duty?

NO

- There is no general duty to protect others from harm nor to prevent third parties causing harm
- The nature of the duty is potentially unlimited, both in respect of what could be required from developers and the persons to whom the duty would be owed.
- Developers would have no protection from rival claimants
- TTL's loss was pure economic loss for which no common law duty of care can be imposed without a special relationship

Could there be a Fiduciary Duty?



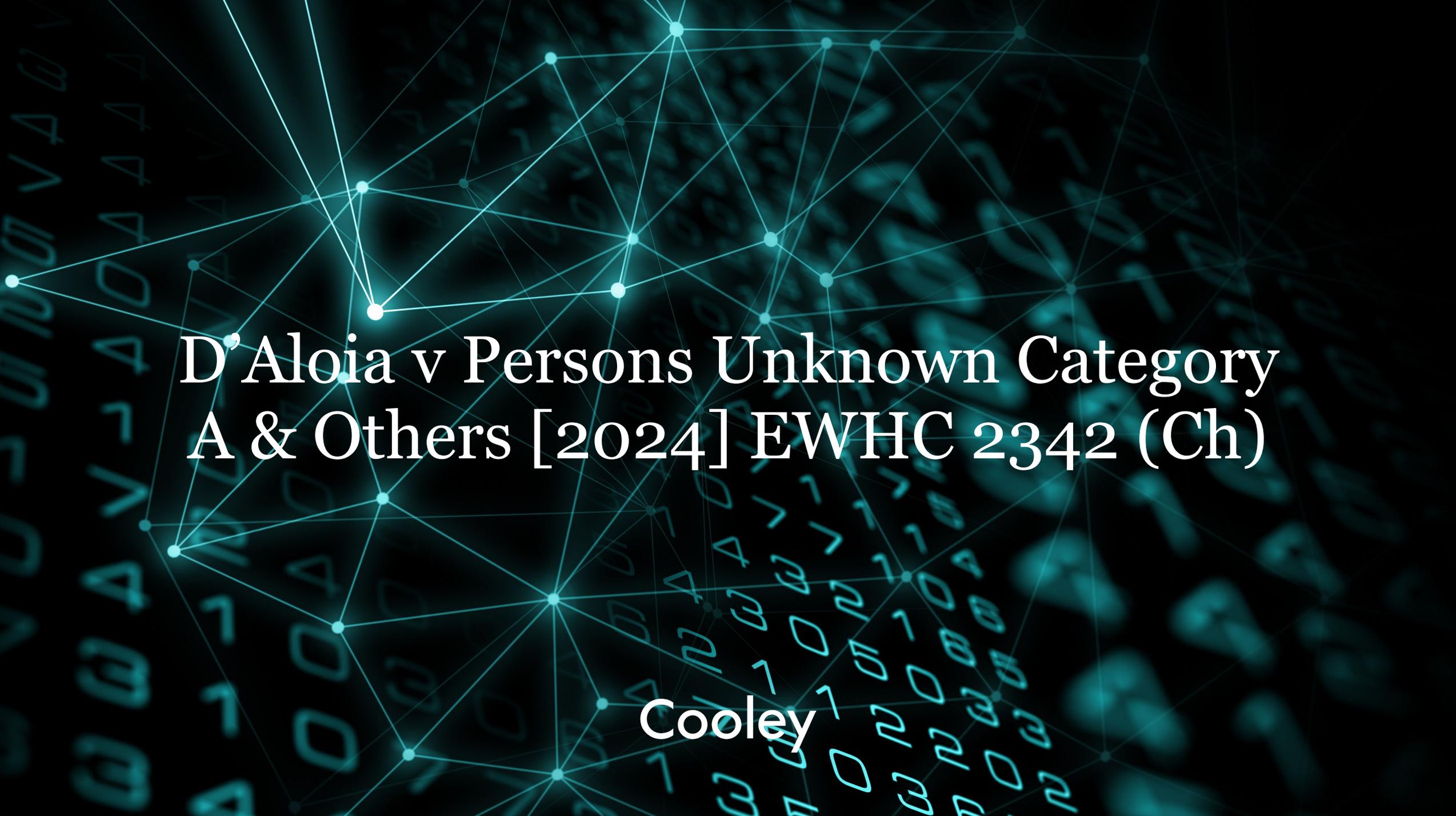
Yes

- If developers are a sufficiently well-defined group
- If property has been entrusted to them (with discretion to take decisions/exercise power on behalf of the owners)
- Single-minded loyalty is owed to the class of users of bitcoin software
- Duty includes not to act in their own self interest and to act positively re. bugs and fixes – this could be extended to returning stolen bitcoin

However

Conclusion

91. I would allow this appeal. The conclusion is not that there is a fiduciary duty in law in the circumstances alleged by Tulip, only that the case advanced raises a serious issue to be tried. The time to decide on the duty in this case is once the facts are established. As the judgment itself showed, to rule out Tulip's case as unarguable would require one to assume facts in the defendant developers' favour which are disputed and which cannot be resolved this way. If the decentralised governance of bitcoin really is a myth, then in my judgment there is much to be said for the submission that bitcoin developers, while acting as developers, owe fiduciary duties to the true owners of that property.



D'Aloia v Persons Unknown Category
A & Others [2024] EWHC 2342 (Ch)

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Overview

- D'Aloia alleged that the first defendants induced him to transfer £2.5 million worth of cryptocurrency to a wallet associated with a scam trading account.
- The cryptocurrency passed through a series of wallets before it was withdrawn by the seventh defendants.
- Proceedings issued against fraudsters and 5 exchanges.
- Trial concerned proceedings against Bitkub.

Claim against Bitkub

- Pledged claim:
 - As a constructive trust had arisen against the fraudsters, Bitkub had taken the USDT subject to a constructive trust.
 - Bitkub was unjustly enriched by obtaining possession / control of the USDT.
- Additional submission at trial:
 - A constructive trust had arisen against Bitkub due to its failure to implement its own KYC & AML procedures.



The Alleged Hops

Hop	From	To	Date	Transfer Amount (USDT)	Amount traced by Mr Moore (USDT)
1	Mr D'Aloia	1dDA	10 January 2022, 7:29pm	999,987.1	999,987.1
2	1dDA	dcEO	17 February 2022, 8:22am	326,868	326,868
3	dcEO	3209	17 February 2022, 8:24am	323,613	323,613
4	3209	98EB	17 February 2022, 8:50am	183,089	96,022
5	98EB	3180	17 February 2022, 9:15am	183,000	96,022
6	3180	6E52	17 February 2022, 9:18am	183,000	96,022
7	6E52	966d	18 February 2022, 4:58am	400,000	46,291
8	966d	A1C3	18 February 2022, 4:58am	400,000	46,291
9	A1C3	322B	18 February 2022, 5:14am	333,801	46,291
10	322B	6947	18 February 2022, 5:37am	388,273	46,291
11	6947	6F95	18 February 2022, 6:29am	351,294	46,291
12	6F95	4e72	18 February 2022, 6:50am	581,000	46,291
13	4e72	237f	18 February 2022, 7:07am	500,591	46,291
14	237f	82e6 (Ms Hlangpan)	21 February 2022, 5:18am	400,000	46,291



Methods of tracing

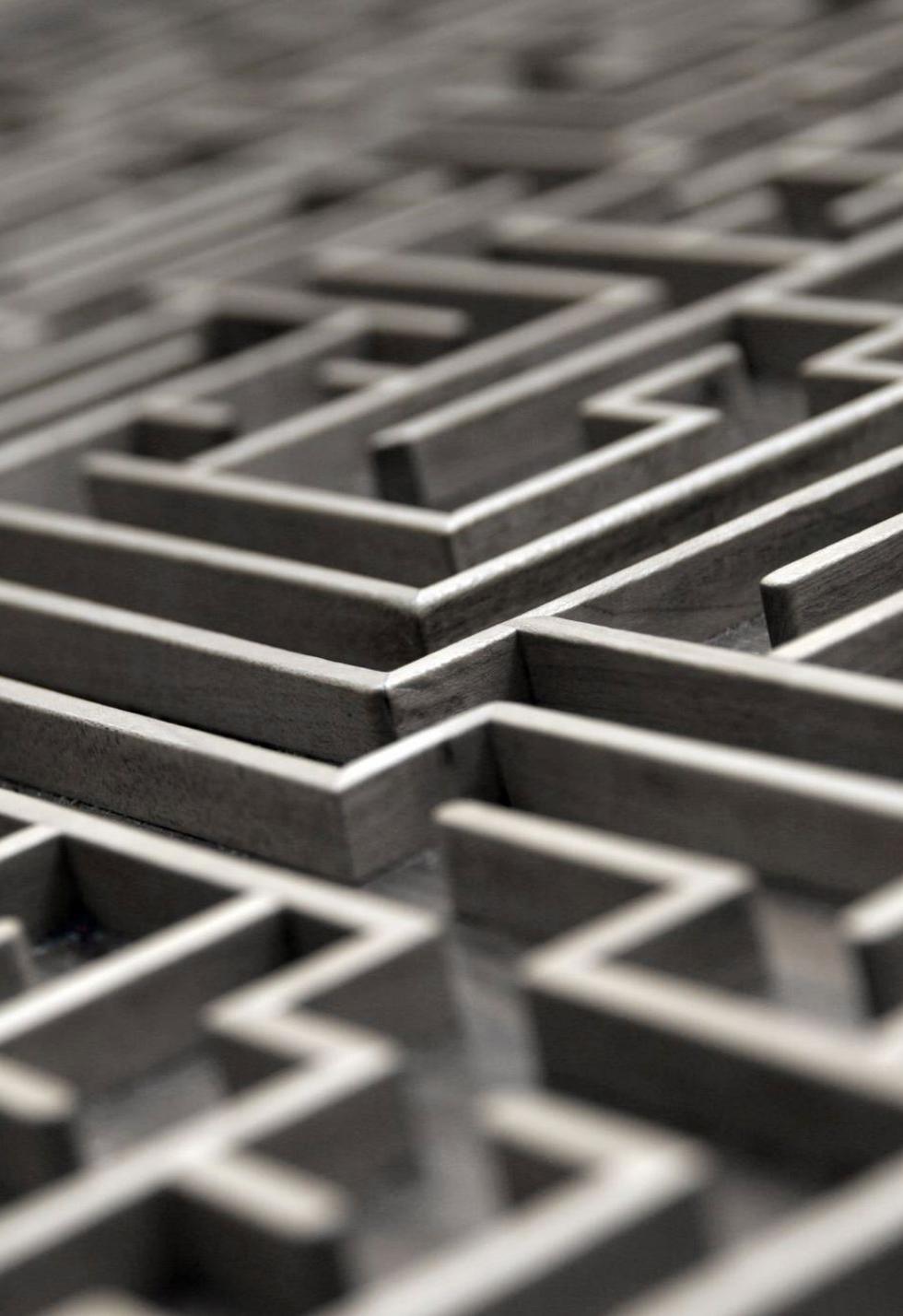
- Court identified:
 - FIFO
 - Pari passu distribution
 - Rolling charge / North American methodology
- Other methods:
 - LIFO
 - Tainted coins last to be used
 - Haircut

What method of tracing is appropriate?

- D'Aloia's expert stated he was using FIFO but had not done so
- Relied heavily on specialist software
- Evidence was "chaotic and... contradictory"
- Failure to adhere to methodology and trace crypto to the Bitkub wallet were fatal to D'Aloia's claim
- There is not one sole methodology that is appropriate. Whatever method is used, it must be:
 - Clearly identified
 - Applied coherently and consistently
 - Treat all innocent claimants comparably

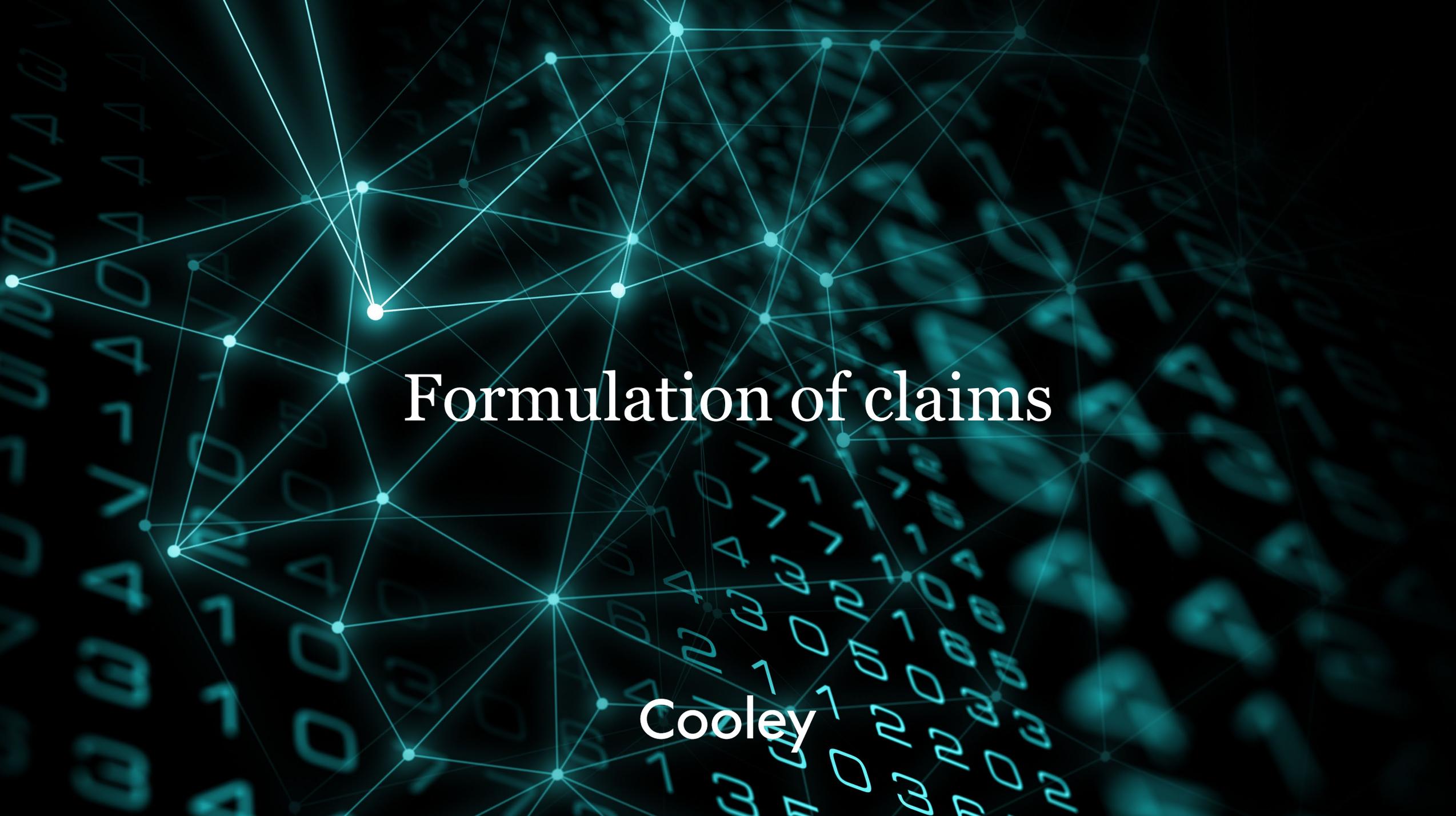
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CHAOTIC & CONTRADICTIONARY



Tracing & Following

- Following = following **the same asset** as it moves from hand to hand.
- Tracing = identifying **a new asset as the substitute** for the old.
- You can **follow** through mixed funds.
- You can **trace** a thing in possession but not a thing in action in equity but not in the common law.
- It would be possible to follow USDT.
- It would also be possible to trace USDT in equity (but not in common law).



Formulation of claims

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Formulation of case when assets have been transferred away from the exchange



Test for “unjust enrichment”

Has the exchange been **unjustly** enriched by the receipt of the assets?



Test for “knowing receipt”

Has the exchange received assets **in knowledge** that they were transferred in breach of trust?



Test for “dishonest assistance”

Did the exchange **dishonestly** assist the wrongdoer to misappropriate or transfer the assets?



Future cases

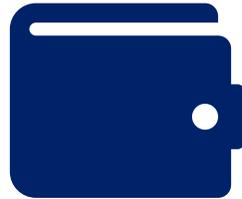
- future claims will be founded on alleged exchange breaches of AML or KYC obligations or internal compliance procedures
- => alleging knowledge of suspicious activity
- the thresholds to establish liability will be contested



Consumer arbitration clauses

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Chechetkin v Payward & Ors &



Arbitration brought by Payward, pursuant to terms and conditions

The Arbitrator had issued awards declaring that (i) she had jurisdiction; and (ii) was not liable to the Claimant for his losses.



English court proceedings brought by Mr Chechetkin

Payward argued that the English Court did not have jurisdiction.

Mr Chechetkin argued that enforcement of the arbitral award would be contrary to public policy

Chechetkin v Payward & Ors &

The English Courts' have jurisdiction over consumer contracts

- The Claimant was a consumer under the CJJA
- S. 101 of the Arbitration Act does not mean the Court is obliged to decline jurisdiction

It would be against public policy to enforce the JAMS award

- The dispute should have been dealt with under English law
- US federal courts and arbitrators should not be determining disputes under English law
- The requirement to retain US lawyers.
- Consumer protections should not be outflanked by the choice of a different system of law



Key Takeaways

- Regardless of an arbitration clause - English consumers may pursue their claims in the English Courts.
- Foreign arbitrators dealing with claims concerning English consumers are likely to be successfully challenged.



Class action risk

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Class action risk is increasing

New substantive
consumer rights

Availability of collective
procedures

Regulatory
action/inaction

Consumer activism =
willing representatives

Specialist claimant bar
and funding, testing
boundaries

Crypto class action

IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1523/7/7/22

BETWEEN:

BSV CLAIMS LIMITED

Applicant / Proposed Class Representative

- v -

(1) BITTYLICIOUS LIMITED

(2) PAYWARD LIMITED

(3) SHAPESHIFT GLOBAL LIMITED

(4) PAYWARD, INC.

(5) SHAPESHIFT AG

(6) BINANCE EUROPE SERVICES LIMITED

Respondents / Proposed Defendants

- the claimants allege that the defendant crypto exchanges engaged in anti-competitive practices by colluding to de-list Bitcoin SV
- causing loss and damage to an estimated 240,000 UK holders of Bitcoin SV
- opt-out claim, with damages estimated up to GBP 9bn
- certified as a class action, but scope reduced

Thank you!



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