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Digital Property Revisited – David J Harvey

The most common aspect of property is its tangibility, although property rights may exist in inchoate forms. The nature of digital material, dependent as it is upon interpretative devices such as laptops or smartphones, poses some challenges to our view of what may or may not be property. In England much of the difficulty with property lies in the fact that data has been equated with information and there is no property in information. In New Zealand, without any detailed technological analysis, the Supreme Court in *Dixon v The Queen* concluded that a computer file could be property for the purposes of the computer crimes provisions of the *Crimes Act 1961* (NZ). However, digital material is intruding into other spheres and cryptocurrencies is one of them. Cryptocurrencies pose an interesting challenge not only to conventional economic theories about money and the State’s interest in a currency system but also to legal theories about the nature of property in the Digital Paradigm. In this article I discuss two cases – one, a case about whether or not there can be property in the contents of files on a computer and hard drive including emails. The second case involves a consideration of cryptocurrencies and whether these can be property within the context of a company insolvency. The two cases are interrelated in that they deal with different aspects of digital material and which is presented in a different way. An analytical pathway to determine whether these and other types of digital data may be property is proposed. 71

Drawing a Line in the Sand – Private International Commercial Arbitrations and United States Judicial Assistance Pursuant to 28 USC § 1782 – Joshua Kang and Michael Legg

The United States Code contains the provision 28 USC § 1782, which is headed “Assistance to foreign and international tribunals and to litigants before such tribunals”. The assistance provided is discovery, including depositions, document discovery and subpoenas. However, there is an open question as to whether § 1782 extends to private international commercial arbitrations. This article considers this question by reference to the decision of the Second Circuit Court of Appeals in *Hanwei Guo v Deutsche Bank Securities Inc.* The Court held that § 1782 does not extend to private international commercial arbitration. This article explains and critiques the Court’s reasoning and considers the interaction between the novel § 1782 and the objectives of commercial arbitration. 86

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