



IP ITeasers 035:

Jurisdiction Gateways in Crypto Disputes Part 2: Fraud Claims

In Part 1 we considered the case law which holds that crypto assets are at least arguably “property”, and that where control over the assets is exercised in England, the English court may have jurisdiction under Gateway 11 of Part 6B (“The subject matter of the claim relates wholly or principally to property located within the jurisdiction”).

In Part 2 we look at alternative and additional Part 6B gateways which may be available in a case of fraud.

1. A claimant may be able to invoke Gateway 9(a) (“A claim is made in tort where-(a) damage was sustained, or will be sustained, within the jurisdiction”). In *Tulip Trading Ltd (“TTL”) v Bitcoin Association for BSV* [2022] EWHC 667 (Ch), the court accepted that it was arguable that damage was suffered in England, being the place where the claimant exercised control over the crypto asset and therefore where its loss of control (and failure to regain control) was felt: see [164]. This would cover, e.g a claim for conspiracy to deceive or defraud the claimant.
2. A claimant which has been defrauded of crypto assets may also be able to invoke Gateway 15 (“A claim is made against the defendant as a constructive trustee, or trustee of a resulting trust where the claim arises out of acts committed or events occurring within this jurisdiction or relates to assets within the jurisdiction”), on the basis that property obtained by fraud becomes subject to a constructive trust as soon as it comes into hands of those responsible for the fraud: see *Osbourne v Persons Unknown and Ozone Networks Inc* [2022] EWHC 1021 (Comm) at [26]; *Fetch.AI v Persons Unknown* [2021] EWHC 2254

(Comm) at [15].

3. A further possibility is Gateway 16 (“A claim is made for restitution where... the enrichment is obtained within the jurisdiction; or (c) the claim is governed by the law of England and Wales”) on the basis that fraudsters have been unjustly enriched by obtaining assets located in England, or that the claim is governed by English law by virtue of Article 10 of the Rome II Convention: see *FetchAI* at [15].

4. The court also found that Gateway 21 (“A claim is made for breach of confidence or misuse of private information where –(a) detriment was suffered, or will be suffered, within the jurisdiction or (b) detriment which has been, or will be, suffered results from an act committed, or likely to be committed, within the jurisdiction) applied on the basis that the unknown fraudsters had obtained access to the claimants’ private key and used it to remove assets from their accounts.

A new Gateway 25 will come into effect on 1 October 2022 permitting service out of the jurisdiction of applications requiring third parties to provide information about wrongdoers.