

**This is a paraphrase in English of the judgment of the Tokyo District Court in the MtGox case based on a literal translation of the Japanese text. The footnotes are editorial additions.
Editors: Professor Megumi Hara, Gakushuin University; Professor Charles Mooney, University of Pennsylvania; Professor Louise Gullifer, University of Oxford.**

Reference number 25541521

Case claiming the bitcoin transfer, etc.

Tokyo District Court, Heisei 26 (Year of 2014), (Wa)33320

Judgement of Civil Division 28 of 5th August 2015 (Year of Heisei 27)

Date of conclusion of oral argument; 10th June 2015

Judgment

Plaintiff Z1

Defendant; Bankrupt Entity/ MtGox Co.,Ltd, Bankruptcy Trustee/ KOBAYASHI Nobuaki

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Main text of judgment

1. Plaintiff's claims are dismissed
2. Litigation expenses shall be borne by the plaintiff.

Facts and Reasons

I. Claim

1. That the defendant transfers to the plaintiff, a sum of 458.8812618 bitcoin.
2. That the defendant pays to the plaintiff, a sum of 7,665,580 yen.
3. That the defendant obtains the Court's permission which is required to execute each performance stated above.

II. Summary of Case

This is a case where the plaintiff, who utilized the online bitcoin exchange operated by MtGox Co., Ltd (hereinafter referred to as “the Bankrupt Company”), against whom bankruptcy proceedings have been commenced, makes the following two claims. First, the plaintiff claims a transfer of bitcoin from the defendant, who is the bankruptcy trustee of the Bankrupt Company. The plaintiff relies on a right of segregation¹ provided for by Bankruptcy Act Article 62² on the basis of ownership of bitcoin, by alleging that the bitcoin, a sum of 458.8812618btc, of which the defendant has taken possession, does not in fact fall within the bankruptcy estate of the Bankrupt Company because it is owned by the plaintiff. Secondly, the plaintiff claims a payment of money equal to the following amount of damages as compensation damages on the basis of a tort, caused by the fact that the defendant did not transfer the bitcoin mentioned above to the plaintiff, as a consequence of which the plaintiff was prevented from using, profiting from or disposing of³ the bitcoin freely, and suffered a loss of 7,665,580 yen. In addition, the plaintiff requests that the court grants the defendant permission to segregate and transfer the bitcoin to the plaintiff, based on Bankruptcy Act Article 78 paragraph 2 item 13⁴.

1. **Outline of the Facts** (facts which, without evidence being heard, are either not disputed by the parties or are easily drawn out from the gist of the entire pleadings)
 - 1) The Bankrupt Company was a stock company whose business was IT (information technology) system construction and consulting, and the operation and management, etc., of a website, and which operated an online bitcoin exchange (hereinafter referred to as "the Exchange").
 - 2) The plaintiff was using an account name of “〇〇△△△△”(hereinafter referred to as "the Plaintiff's Account") on the Exchange.

¹ The right of segregation is the right of a person who is entitled to assert that an object does not form part of the bankruptcy estate, and so he is claiming the object and is not a creditor proving his claim in the bankruptcy proceeding. In this case, the plaintiff claims the right of segregation on the basis that the plaintiff is the owner of the object.

² Article 62 state as below. “The commencement of bankruptcy proceedings shall not affect a right to segregate, from the bankruptcy estate, property that does not belong to the bankrupt (referred to as a "right of segregation" in Article 64 and Article 78(2)(xiii)).

³ This refers to the three characteristics of property rights : “*Usus, abusus, and fructus*”.

⁴ The relevant parts of Article 78 are set out here :

(Powers of Bankruptcy Trustee)

Article 78 (1) Where an order of commencement of bankruptcy proceedings is made, the right to administer and dispose of property that belongs to the bankruptcy estate shall be vested exclusively in a bankruptcy trustee appointed by the court.

(2) A bankruptcy trustee shall obtain permission of the court in order to conduct the following acts:...

(xiii) Admittance of a claim on the estate, right of segregation or right of separate satisfaction;...

(5) Any act conducted without the permission set forth in paragraph (2) shall be void; provided, however, that this may not be asserted against a third party without knowledge.

(6) A bankruptcy trustee, when he/she intends to conduct any of the acts listed in the items of paragraph (2), shall hear opinions of the bankrupt, except in cases where such hearing is likely to cause a delay or in any of the cases listed in the items of paragraph (3).

- 3) The Bankrupt Company shut down all users' access to the Exchange on 25th February 2014, and filed for commencement of a civil rehabilitation proceedings in the Tokyo District Court on 28th of the same month. However, the decision commencing the bankruptcy proceedings was made around 16th April of the same year, and the defendant was appointed as a bankruptcy trustee under an order for commencement of bankruptcy proceedings which was issued by the same court on 24th of the same month. (A4, 5)
- 4) After commencement of the bankruptcy proceedings, the remaining balance on the Plaintiff's Account is stated on the website of Bankrupt Company as follows: (A2)
 - a) 458.8812618btc ("btc" is a bitcoin unit. The bitcoin of the balance on the Plaintiff's Account is hereinafter referred to as "the Bitcoin")
 - b) Japanese yen; 10.762 JPY
 - c) US dollars; 0.00002 US\$

2. Points at issue and parties' arguments on the issues

1) Whether bitcoin can be object of ownership (Issue 1)

(Grounds of the plaintiff's claim)

Although the object of ownership must be "a tangible thing," when the emphasis is on the characteristic of an object of rights, an object that is subject to exclusive legal control can be regarded as "a tangible thing." The electronic record held on a number of electronic computers embodies the bitcoin and is not merely a record of it, so that bitcoin has an existence; and therefore it is possible to subject it to exclusive control, thus it is the object of ownership, corresponding to a "thing", that is, a tangible thing, under Article 85 of the Civil Code.

In addition, the bitcoin can be the subject of exclusive control because it can be said that when the amount of bitcoin is confirmed as related to a specific bitcoin address, the owner of the address takes ownership of bitcoin equivalent to the balance and because, additionally, if the same person manages the private key of this address by concealing it, increasing or decreasing the amount of bitcoin on this address is impossible to achieve against the wishes of this person.

(Defendant's argument)

The concept of ownership can only have as its object a "thing", that is, a "tangible thing" and may not have as its object an intangible thing. A "tangible thing" has physical existence occupying part of space, and in the broad sense, includes natural forces such as electricity, etc. However, it is not applicable to anything which does not have a physical existence such as mere information of data, etc., and right, etc.

When sending bitcoin through the bitcoin network, the electronic records, etc., which represent the bitcoin, are not sent from a person who manages and knows the private key of the sender's bitcoin address to a person who manages and knows the private key of the recipient's bitcoin address. Therefore, the electronic record itself representing the bitcoin is not actually transferred from the above sender to the above recipient. In accordance with the above argument, the electronic records

representing each bitcoin do not exist and the bitcoin does not have a physical existence, so that it does not constitute a "tangible thing," nor can be the object of ownership.

Thus, the plaintiff does not have ownership of the Bitcoin, nor a right of segregation based on any such ownership.

2) Whether the plaintiff can exercise a right of segregation against bitcoin to the defendant (Issue 2)

(Grounds of the plaintiff's claim)

- a) As alleged in (1) above, bitcoin can be subject to ownership as a "thing," and by using a bitcoin address and a private key, exclusive control is possible, and, in addition, bitcoin can be specified and distinguished from one another. Moreover, the plaintiff deposited Japanese yen and bitcoin with the Bankrupt Company, and, using these deposits, bought and sold bitcoin to and from other users on the Exchange, and at the time when the commencement of the bankruptcy proceedings of Bankrupt Company was issued, owned the Bitcoin. In addition, because the plaintiff deposited the bitcoin with the Bankrupt Company for the specific purpose of buying and selling bitcoin, the ownership of the deposited bitcoin belongs to the plaintiff, who is the bailor, and is not transferred to the Bankrupt Company, the bailee. Moreover, even though the bitcoin that the plaintiff had deposited with the Bankrupt Company had been transferred to a bitcoin address created by this company for each user in relation to which only this company managed and knew the private key ("the address associated with the user"), the reason that only the Bankrupt Company managed and knew the private key was to conduct, in a stable manner, the business of buying and selling bitcoin in accordance with each user's orders. Therefore, based on the facts stated above, the Bankrupt Company does not gain either a predominant right or any legal status against the plaintiff, the user.
- b) The Bankrupt Company automatically dispersed bitcoin deposited by the users of the Exchange, including the plaintiff, from each "address associated with the user" created by the Bankrupt Company, to a number of bitcoin addresses (in relation to which the private key was managed and known by only the company and which was not associated to the users) created by this company, and trading was carried out on the Exchange by randomly allocated transfers. It may be said that the deposit mentioned above is held fungibly by the Bankrupt Company, that is, deposited together with other commingled assets. In this arrangement, a number of bailors deposit things of the same kind and quality, and the bailees store these by mixing the things together, and each bailor receives the return of things deposited in proportion to the amount deposited on the date of return designated in the contract. Therefore, the plaintiff may claim the return of an amount of bitcoin from the defendant in the proportion that those deposited by the plaintiff bear to the bitcoin which were managed by Bankrupt Company.⁵
- c) And, based on the fact that the bitcoin are held by the Bankrupt Company in the manner stated above in b), it can be said that all the bitcoin stored in all the bitcoin addresses in relation to which only this company managed and retained the private key were co-owned

⁵ The text describes a pro rata distribution from the commingled bitcoin.

by all the users including the plaintiff. Moreover, the defendant, in the course of the bankruptcy proceedings, will distribute the bitcoin stored in the bitcoin address mentioned above. Once these distributions are made, there is a danger that the bitcoin will be passed to a third party and will disappear. Therefore, the plaintiff can claim to return the amount of bitcoin stored in the above bitcoin address that is equivalent to the plaintiff's share, as an act of preservation of the co-owned property under the management of the defendant.

- d) In addition, since the Bankrupt Company has shut down the users' access to the Exchange, the plaintiff may neither transfer the bitcoin stored in the plaintiff's Account to a "Wallet" in the possession of the plaintiff, nor is able to give a valid instruction to transfer the Bitcoin. It follows that the defendant has taken possession of the Bitcoin owned by the plaintiff.

(Defendant's argument)

As alleged in (1) above, bitcoin is not a tangible thing, and therefore cannot be an object of ownership. Thus, there are no grounds for the claim concerning the deposit contract or for an act of preservation of the co-owned property, since these are made on the basis that bitcoin can be the object of ownership.

And, while it is possible to have a possessory right over a "thing," as stated above, bitcoin does not correspond to a "thing", that is, a tangible thing, and therefore, cannot be the object of a possessory right either. The user account on the Exchange was a type of client ledger that the Bankrupt Company created for each user, just for the purpose of recording numbers, and the Bankrupt Company did not take possession of bitcoin by storing them in the account.

3) Whether the fact that the defendant has not transferred the bitcoin to the plaintiff constitutes a tort against the plaintiff, and, if it does, the quantum of damages to be awarded to the plaintiff (Issue 3)

(Grounds of the plaintiff's claim)

- a) The defendant is taking possession of the bitcoin owned by the plaintiff without transferring it to the plaintiff. This act of the defendant constitutes a tort, infringing on the ownership of the bitcoin owned by the plaintiff.
- b) The plaintiff was prevented from freely using and making a profit from the bitcoin because of the defendant's tort described above. This damage calculated in monetary terms is not less than five hundred thousand yen.

In addition, due to the defendant's tort, the plaintiff was prevented from disposing of the bitcoins freely, and because the market value of the bitcoin declined during this period, the Plaintiff has suffered a loss of 7,165,580 JPY, that is, the difference between the market value of the Bitcoin at of 2nd June 2014, 31,122,442 JPY (458.8812618btc x 658.79 US\$ (the closing price of Coin desk Bitcoin Price Index on the same day)] x 102.95 JPY (TTS rate of Bank of Mitsubishi Tokyo UFJ on the same day) and the market value of the Bitcoin at 24th August 2014, 23,956,862 JPY (458.8812618btc x 497.4 US\$ (the closing price of the above Index on the same day) x 104.96 JPY (the above TTS rate on the same day).

(Defendant's argument)

As alleged in (1) above, because bitcoin cannot be an object of ownership, the plaintiff does not hold title to ownership of the Bitcoin, so a tort infringing this title cannot occur.

III. Decision

1. Issue 1 (Whether bitcoin can be the object of ownership)

- i. The plaintiff claims the transfer of the bitcoin by exercising a right of segregation under Article 62 of Bankruptcy Act on the basis of ownership, because the plaintiff had ownership of the Bitcoin comprising the balance in the Plaintiff's Account, as found above (II 2 (1)). The basic issue is whether the bitcoin can be the object of ownership. (And, as set out above in II 2 (2), the plaintiff alleges that a contract of deposit in the form of commingled assets was concluded between the plaintiff and the Bankrupt Company, and that it had a co-ownership interest in the bitcoin stored in a number of bitcoin addresses created by the Bankrupt Company. This argument is based on the presupposition that the Bankrupt Company had been dispersing bitcoin belonging to users on the Exchange, including the plaintiff, to a number of bitcoin addresses created by the company and, in the course of trading, bitcoin is transferred from these addresses to the buyers addresses which are randomly allocated.⁶ However, these allegations are premised on the argument that bitcoin can be the object of ownership.)

Therefore, the Court examines this point.

- ii. The requirement that bitcoin can be the object of ownership
 - a) While ownership is a right to freely profit from, use, and dispose of the thing freely (Art. 206 of the Civil Code) within the restriction of law, an object of ownership, a "thing," is a "tangible thing" under Art. 85 of the Civil Code. A tangible thing shall be defined as an object which occupies space such as liquid, gas, substance, and it is a concept contrary to an intangible thing, for example, a right such as a claim or copyright, or natural force (electricity, heat, and light). Therefore, the Civil Code basically limits the object of ownership to a tangible thing. (There are some exceptions to the general principles which require the object of ownership to be a tangible thing. First, the Civil Code has provisions, for example, for a pledge of a right⁷ where the right is the object of the pledge (Art.362 of the Civil Code), etc. the Secondly, a right with exclusive control is admitted in relation to special laws such as Copyright Law and Patent Law, but it is not the case that the above general principles of the Civil Code are transformed because of this.)
Furthermore, in order to be the object of ownership, in addition to being a tangible thing, because ownership is a right that enables the owner to prevent usage of the

⁶ It appears that the procedure being described is as follows : (1) the bitcoin deposited by clients are transferred to several addresses created by the company (2) clients wishing to buy bitcoin ('buyers') indicate this to the company (3) the company transfers the relevant amount of bitcoin to each buyer, but the provenance of each buyer's bitcoin (ie which company address is the source of that bitcoin) is randomly determined.

⁷ Examples of a 'right' include claims, superficies, the right to lease a farm in perpetuity, Intellectual Property, a telephone subscription right etc..

"thing" as the object of ownership by others, a 'thing' must be capable of being exclusively controlled. Further an individual (a natural person) cannot be the object of ownership, since individual dignity is a fundamental principle of law.

- b) While the plaintiff acknowledges that the object of ownership must be a tangible thing, it alleges that the possibility of exclusive legal control is enough to make a thing a tangible thing. This claim by the plaintiff is understood to be an allegation that when determining the object of ownership, one only needs to judge the existence of exclusive control, and not whether the thing is corporeal.

According to this understanding, a right of which there can be exclusive control, such as an intellectual property right, etc., can be the object of ownership, and there can therefore be a concept of "ownership of right." However, "owning a right" indicates only that a right belongs to a person: this does not mean that there is a need to expand the concept of a "tangible thing", as this is against the general principles of the Civil Code which distinguish real rights from claims in addition to going against Art.85 of the same code. Thus, the claim of the plaintiff that leads to the above consequence is not admitted.

Additionally, the plaintiff asserts that, when something has a proprietary nature deserving of legal protection, it is a "thing" under Art. 85 of the Civil Code, namely a "tangible thing". However, things that deserve legal protection can be tangible or intangible, therefore deserving legal protection cannot be a criterion to determine whether something is a "thing" within Art. 85 of the Civil Code.

- c) From the facts stated above, whether something is subject to ownership should be decided by considering its corporeality and whether it is possible to have exclusive control of it. (Because the prohibition on an individual being the object of ownership is not an issue in this case, we omit discussion of it in the following paragraphs.)

iii. Examination of bitcoin

- a) Bitcoin can be defined as "digital currency (alternative currency created by digital technology)" or "crypto-currency" (A7). In the same way, it was called a "commodity on the Internet" in the Terms of the service of the Exchange (A1). Its system and technology mainly use an online network (A7, B1). It follows that it is obvious that bitcoin has no corporeality which occupies space.
- b) In addition, in view of the evidence (A7, B1) and the gist of the entire pleadings, the following facts are admitted.
- i) Within the "transaction data" (information about the sender's bitcoin address, the recipient's bitcoin address, and the bitcoin numeric data, etc., which is to be sent) that was created after the commencement of the bitcoin network, there is the "Blockchain" which records everything subject to "Mining" (an act that the participants on the bitcoin network do a certain calculation for transaction). Any person who wishes to participate in the bitcoin network may have the blockchain on his or her computer's hard drive, etc. as a public electronic record on the Internet. Therefore, a number of participants own the data about the blockchain.
- ii) The participants on the bitcoin network may register for a bitcoin address as identification information in order to specify a destination to which the bitcoin are to

be sent. The identification information of the address is generated by a public key (verification key) as part of a digital signature, and this is paired with a private key (signature key). The private key is managed and known only by the participant who is registered at the address, and it is not disclosed to any other person.

- iii) In order to carry out the activity of sending a certain quantity of bitcoin from one bitcoin address (account A) to another bitcoin address (account B), the following actions are required on the bitcoin network. (1) A participant who manages and knows the private key of the sender's account A creates a record (transaction) of the transfer of a certain quantity of bitcoin from account A to account B by using that private key. (2) A participant who manages and knows the private key of the sender's account A sends the created transaction to another network participant (who is selected randomly among the online participants, and is not limited to the participants who manage and know the private key of the recipient's account.) (3) A participant who receives the transaction verifies whether that transaction was created by the private key of the sender's account A and whether the amount of bitcoin sent is lower than the number which, calculated on all the transaction records in the blockchain about the sender's account A, are associated with account A. (4) Once each point is confirmed as stated above by this verification process, the verified participant transfers that transaction to another participant through the Internet, so that the transaction is widely spread on the bitcoin network by repeating this transfer. (5) The transaction shall be subject to mining, and is recorded on the blockchain by mining.

As stated above, the action of sending bitcoin from account A to account B is not done by sending an "electronic record representing the bitcoins to be sent," and the involvement of a person other than the parties is required in order to carry out the transaction.

- iv) The bitcoin balance (the remaining quantity) in the bitcoin address created and managed by a specific participant is the quantity calculated after deducting all of the bitcoin transactions associated to the same address recorded on the blockchain, and there is no electronic record representing actual bitcoin equivalent to the balance in that bitcoin address.

In view of the operating mechanism of bitcoin described above⁸ and the understanding of what it means for a person who manages the private key to hold bitcoins in a specific address which he created, the person who manages the private key of this bitcoin address does not have the exclusive control of the remaining bitcoin balance on this address.

- c) As verified above, it is not the case that bitcoin has the necessary corporeality and the susceptibility of exclusive control to be the object of ownership. Therefore, the bitcoin cannot be the object of ownership, which is a real right.

⁸ This is a reference to the whole process of transfer of bitcoin described in (iii) but, in particular, the description of mining as the method of recording the transactions on the blockchain contained in (5) and the conclusion that a person other than the parties needs to be involved to transfer the bitcoin. This fact led the court to conclude that the manager of the private key does not have 'exclusive control' of the bitcoin.

2. Issue 2 (Whether the plaintiff can exercise a right of segregation in relation to the defendant)

As verified and explained in 1 above relating to whether bitcoin can be the object of ownership, the plaintiff has neither a right of ownership of the Bitcoin, nor a right of co-ownership of the bitcoin retained in the bitcoin address managed by Bankrupt Company. Also, it is decided that there is not a contract of deposit of commingled assets based on the presupposition of ownership of the deposited goods.

Thus, the plaintiff may not exercise a right of segregation on the basis of ownership of the Bitcoin.

3. Issue 3 (Whether the defendant has committed a tort)

Although the plaintiff alleges that the defendant infringed ownership of the Bitcoin, as examined above, a tort is not admitted since the plaintiff cannot have ownership of the Bitcoin.

4. Object of the claim of 3 (in Claim)

It appears that the plaintiff seeks to compel the court to give the defendant permission based on Bankruptcy Act Article 78 paragraph 2 item 13 to transfer bitcoin to the plaintiff (as set out above) along with a claim based on a right of segregation and a claim for damages based on the alleged tort of the bankruptcy trustee. As stated above, the plaintiff does not have a right of segregation, accordingly it is impossible to exercise, and failure to do so cannot constitute a tort by the defendant, the bankruptcy trustee. In addition, even if the plaintiff is a person who has a right of segregation or claim on the estate, this person does not have the right to compel the bankruptcy trustee to obtain the permission referred to above.

Thus, there are no grounds for this claim seeking to obtain the above permission.

IV. Conclusion

Accordingly, because there is no proper rationale for all claims of the plaintiff, the Court shall dismiss them and makes a decree as described in the main text of the judgment.

Tokyo District Court, Civil Division 28

Presiding Judge, KURACHI Masumi

Justice ABO Kensuke

Justice KABURAKI Mayuko