財產問題為何重要

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加密資產是否屬財產，是其他所有私法後果所依賴的問題。如果代幣屬財產，其擁有人可取得專有權禁制令，在竊賊手中凍結代幣。擁有人可把代幣的收益追蹤至其他資產，可向以信託形式持有代幣的託管人的無力償債產業取回代幣，亦可以遺囑將其遺贈。如果代幣只是資訊或合約上的期望，擁有人便只剩下基於合約、侵權或不當得利的對人申索。這類申索與其他所有無抵押債權人的申索同等排序，一旦被告無力償債便化為烏有。在引起最多加密貨幣訴訟的兩種情況下，實際利害關係最大。在盜竊或欺詐案件中，受害人需要專有權申索，才能追及資產的去向。在平台破產時，客戶需要專有權申索，才能置身於按比例分配（pari passu）之外。

新加坡承襲的英國私法把個人財產分為兩類。據法佔有物（things in possession）是可實際持有的有形物件，例如金條或硬件錢包。據法權產（things in action）是只能透過法律行動強制執行的權利，例如債項、股份或合約申索。Fry大法官在*Colonial Bank v Whinney*一案中指出，「所有個人財產若非據法佔有物，即為據法權產」，法律並不承認兩者之間存在第三類（tertium quid）。自2019年以來，每一宗普通法地區關於加密資產的判決都引用了這段附帶意見。[1] 加密資產在任何明顯意義上都不屬於兩者之一，因

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為它不能被實際佔有，亦不是針對任何可識別人士的權利，比特幣持有人並無權要求任何人交付任何東西。因此，法院面對的問題是：現有分類能否延伸，抑或需要第三類。

新加坡在2020年至2023年間的四項判決中得出的答案是：加密資產屬財產，並屬於據法權產類別，而該類別被理解為一個「廣泛、靈活且並非封閉」的剩餘類別。[2] 本章追溯這個答案是如何得出的、有多穩固，以及對託管、信託及破產有何意義。

註釋

1. *Colonial Bank v Whinney* (1885) 30 Ch D 261，第285頁（Fry LJ），經上訴維持 (1886) 11 App Cas 426 (HL)。該段附帶意見在*ByBit Fintech Ltd v Ho Kai Xin* [2023] SGHC 199第[35]段被引用。 ↩
2. *ByBit Fintech Ltd v Ho Kai Xin* [2023] SGHC 199，第[35]–[36]段（Philip Jeyaretnam J）。 ↩

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