

## Cryptoassets as Property

One of the claims about cryptoassets (like bitcoin or ether) is that they are the first instance of a truly unique digital ‘thing’ – one that can be provably transferred to someone else, leaving the original owner of the ‘thing’ no longer holding it. This is also referred to as having solved the ‘double spending problem.’

Our legal conclusion on whether a cryptoasset is property underlies other legal decisions about whether and how a cryptoasset should be taxed, whether it should be treated as a commodity or a security, and how it should be treated in a trust or estate.

At the moment, the view of a cryptoasset as a digital ‘thing’ is influencing the creation of financial products (like exchange traded funds or futures contracts) based on one more more cryptoassets (such as the Bitcoin futures traded on CME and CBOE). We are also seeing creative uses of cryptoassets’ feature of digital uniqueness such as Cryptokitties, viewed as an example of “non-fungible tokens,” which you will read about this week.

### READINGS

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<https://techcrunch.com/2018/08/21/why-the-next-cryptokitties-mania-wont-be-about-collectables/>

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## REFLECTION QUESTIONS

- 1) What are crypto-assets? Are there different types of cryptoassets? How are different types of crypto-assets distinguished from one another?
- 2) How are crypto-assets like real-world property? How are they different from it? Is the 'thing-ness' of a crypto-asset like the 'thing-ness' of a physical asset? How do they compare to other assets created through legal fictions, such as stocks or bonds?
- 3) What are the arguments for treating crypto-assets like real-world property under existing property law? What are the arguments against this?
- 4) Should crypto-assets have a special new form of property law applied to them? What should that look like?
- 5) How do we determine the value of a crypto-asset? What factors are part of the valuation exercise?
- 6) What are non-fungible tokens? Why are people excited about them?
- 7) Are there any take-aways from what we observed with the Cryptokitties phenomenon?