



When Harry leaves Sally: Digital Assets in Divorce and Succession.

The rise in popularity of digital assets, such as cryptocurrencies and non-fungible tokens (NFTs), along with decentralised finance (DeFi), presents new legal and practical challenges for wealthy individuals in the UK dealing with divorce and estate planning. This article offers a straightforward introductory guide for legal professionals advising High Net Worth Individuals (HNWIs), covering essential topics like disclosure requirements, valuation methods, tax implications, and estate planning strategies related to digital assets. By addressing the emerging trend of digital assets and cross-border issues, this paper emphasises why a proactive and multidisciplinary approach is essential in order to effectively protect and manage digital wealth.

The Legal Status of Digital Assets in the UK

A. Defining and Classifying Digital Assets

The term ‘digital asset’ encompasses a broad range of tangible and intangible assets that exist in digital form. For the purposes of this paper, a digital asset is defined as ‘a digitally represented store of value or contractual right that can be transferred, stored, or traded electronically’ (adapted from Law Commission, 2023).¹ This definition includes, but is not limited to:

- **Cryptocurrencies:** Decentralised digital currencies that use cryptography for security and operate on a blockchain (e.g., Bitcoin and Ethereum).
- **Non-Fungible Tokens (NFTs):** Unique digital assets representing ownership of a specific item or piece of content (e.g., digital art, collectibles).
- **Decentralised Finance (DeFi):** Financial products and services built on blockchain technology, such as lending platforms, exchanges, and stablecoins.

¹Law Commission, Digital Assets: A Scoping Paper (2023).



B. Analysing Property Rights in Digital Assets

The legal status of digital assets as ‘property’ is a subject of ongoing development. Traditional legal concepts of property require tangibility and physical control, which do not readily apply to digital assets.² However, recent UK case law has started to influence the treatment of digital assets in legal proceedings. Courts have recognised the proprietary nature of cryptocurrencies, as seen in *AA v Persons Unknown*³ and *Robertson v Persons Unknown*⁴, both of which affirmed that cryptocurrencies can be classified as property. These cases represent a significant development, as they provide a clear legal basis for treating cryptocurrencies as assets that can be subject to legal claims and remedies.

In *AA v Persons Unknown*, the court granted a proprietary injunction over Bitcoin, recognising the claimant's right to trace and recover dissipated crypto-assets. Similarly, *Robertson v Persons Unknown* reinforced this position, further solidifying the view that crypto-assets can be treated as property under English law.

The recent case of *D'Aloia v Persons Unknown & others* (including Bitkub Online Co Ltd)⁵ has further clarified the legal status of cryptocurrencies, specifically addressing the nature of the stable coin Tether (USDT). The High Court held that USDT constitutes property under English law, describing it as ‘neither a chose in action nor a chose in possession, but rather a distinct form of property not premised on an underlying legal right’⁶. This decision is significant as it extends the concept of property to include crypto assets that do not fit neatly into traditional categories of property law. Specifically, in *D'Aloia*, the key question was whether digital assets possessed the essential characteristics of property: definability, identifiability, exclusivity, and transferability as defined in *National Provincial Bank v Ainsworth*.⁷

² JE Penner, *The Idea of Property Law* (OUP 1997).

³ *AA v Persons Unknown*[2019] EWHC 3556 (Comm).

⁴ *Robertson v Persons Unknown*[2023] EWHC 1450 (Comm).

⁵ [2024] EWHC 2342 (Ch)

⁶ *Ibid*

⁷ *National Provincial Bank v Ainsworth*[1965] AC 1175.



The *D'Aloia* judgment affirms that cryptocurrencies like USDT meet these criteria, paving the way for their inclusion in matrimonial assets and estate planning considerations. This evolving jurisprudence demonstrates the Courts' willingness to adapt traditional legal principles to the digital age, ensuring that the law keeps pace with technological advancements and new forms of wealth. As digital assets continue to gain prominence in personal and commercial spheres, this legal recognition will be crucial in providing certainty and protection for asset holders, divorcees, and beneficiaries alike

The implication of this recognition extends to divorce and estate planning contexts, where the ability to classify crypto as property is fundamental for equitable distribution of matrimonial assets in divorce proceedings and inheritance transfers.

C. Statutory Framework: Interpreting Existing Legislation

1. **Matrimonial Causes Act 1973 and Civil Partnership Act 2004** provide the statutory framework for asset distribution in divorce and dissolution proceedings, respectively. By virtue of Section 25 of the Matrimonial Causes Act 1973 and Schedule 5 of the Civil Partnership Act 2004, the courts consider all matrimonial 'property' of the parties when determining a fair distribution of assets.⁸ The interpretation of such 'property' is broad, but it is not unlimited, necessitating case-by-case determination of whether assets fall within its scope. Courts have demonstrated a willingness to adapt traditional legal principles to address novel forms of wealth, including digital and crypto assets acquired during the marriage or civil partnership.

This approach is evident in cases such as *White v White*⁹, where the court emphasised the need for a fair distribution of assets regardless of their nature.

⁸Matrimonial Causes Act 1973, s 25. & Civil Partnership Act 2004 schedule 5

⁹*White v White*[2000] UKHL 54.



2. **Property (Digital Assets etc) Bill 2024:** The Property (Digital Assets etc) Bill 2024 represents a significant step in clarifying the legal status of digital assets. By defining digital assets as personal property, the 2024 Bill provides a clearer legal basis for their treatment in various legal contexts, including divorce and estate planning.¹⁰ This clarification is essential for ownership rights, disclosure obligations, and enforcement mechanisms, aiming to fully integrate digital assets into existing legal frameworks and provide more predictable legal outcomes. However, the 2024 Bill does not address all of the legal aspects and instances of digital ownership thus leaving gaps and uncertainties. Further amendments may be required to address issues such as the treatment of DeFi instruments and the regulation of crypto exchanges.

D. Academic and Commission Perspectives

The Law Commission's 2023 report underscored the need for legal reform concerning digital assets, highlighting the complexities and unique challenges they pose to existing legal frameworks.¹¹ The report addressed key areas such as the definition of digital assets, proprietary rights, and cross-border issues. For example, legal scholars argue that traditional valuation methods may not be directly applicable to digital assets due to their volatility, decentralized nature, and potential for anonymity.¹² An interdisciplinary approach combining legal, financial, and technological expertise is increasingly advocated.

¹⁰Property (Digital Assets etc) Bill 2024, cl 1 (1).

¹¹Law Commission, Digital Assets: A Scoping Paper (2023).

¹²A Rahmatian, 'Inheritance of digital assets: A comparative study' (2018) 26(2) International Journal of Law and Information Technology 111.



Digital Assets in Divorce Proceedings: Valuation, Disclosure, and Distribution

A. Marital v. Non-Marital Property

The first step is to identify whether the digital or crypto asset was a ‘marital’ or ‘non-marital’ property based on when the assets were acquired: during or before the marriage. If the latter, the original value up to the marriage is separate property while any growth of the asset during marriage will be considered a marital asset. Other factors considered by the Courts in categorising a marital asset are: funds used to buy the assets (e.g. single name bank account vis-a-vis a joint one); commingling of separate property with marital property; existence of a prenup/cohabitation agreement specifying the separate non-marital nature of the digital assets; a gift to spouse during the marriage (e.g. a NFT collectible as an anniversary gift). Also of note is whether the crypto-savvy spouse may have executed a ‘deed of ownership or agency’ and formalized the title of a digital asset as owned in joint tenancy, or in trust. The digital assets could also be part of the spouse’s business inventory (if they have purchased it with corporate funds or opened a business account held at an exchange), making the asset to be divided part of the spouse’s company’s share valuation.

B . Disclosure Obligations: Unearthing Hidden Wealth

Disclosure of digital assets and specifically of crypto requires a deep understanding of blockchain technology and digital asset management, often necessitating a more technical approach. Rule 9.14 of the Family Procedure Rules 2010 mandates *full and frank* disclosure of all financial assets in divorce proceedings, and this extends explicitly to digital assets.¹³ Parties are required to disclose all cryptocurrency wallets’ addresses, NFT holdings, DeFi investments, and other digital property owned or controlled by them.

¹³Family Procedure Rules 2010, r 9.14.



Given the potential for concealment due to pseudonymity and the highly advanced nature of blockchain tech, forensic accounting and blockchain analysis are indispensable tools in divorce proceedings involving crypto assets, potentially requiring the use of blockchain explorers analytics, sophisticated tracing tools, digital exchange subpoenas, and even device forensics as seen in *V-v- T*.¹⁴

In cases where digital assets are suspected of being concealed, courts have demonstrated a growing willingness to issue freezing injunction orders to preserve assets pending the outcome of the proceedings. *V-v- T* highlights the court's proactive approach in safeguarding assets, emphasising transparency and accountability in disclosing digital holdings during divorce.

C. Forensic Accounting and Blockchain Analysis: Tracing the Untraceable

Alongside traditional bank statements reviews (looking for money transfers to crypto exchanges), given the pseudonymous nature of blockchain transactions and the fact that crypto is held on blockchain networks, forensic accounting and blockchain analysis may be indispensable tools in divorce proceedings involving digital assets. These techniques include:

- **Public Ledger Analysis:** tracing wallet addresses to identify transactions and link them to individuals. This involves scrutinising blockchain explorers and employing sophisticated tracking tools.
- **Digital Exchange Subpoenas:** obtaining account histories from cryptocurrency exchanges to identify hidden assets. This often requires navigating diverse international legal frameworks and data protection regulations.

¹⁴*V v T* [2023] EWFC 112.



- **Device Forensics:** examining computers, mobile phones, and other devices for cryptocurrency wallets and exchange accounts. This demands specialized expertise in digital forensics and data recovery.
- **Tracing Reports:** used to negotiate a 'fair' settlement presented to the Court prior to the Financial Disclosure Resolution Hearing. A tracing expert can be instructed to produce a report confirming with accuracy all crypto transactions associated with a wallet and the outstanding balance.

Forensic techniques and employment of tracing experts are important in high-net-worth divorces where one party may attempt to conceal assets, as seen in *Wright v Wright*,¹⁵ where forensic accountants were employed to uncover the full extent of the husband's assets. The experts conducted a detailed analysis of the couple's financial records, including bank statements, tax returns, and business accounts. This investigation revealed previously undisclosed offshore investments and business interests, which significantly impacted the final settlement. The case highlights the fundamental role of forensics in ensuring a fair division of marital assets and preventing the concealment of wealth in high-stakes divorce proceedings.

D. Valuation Challenges and Methodologies: Assigning a Monetary Value

The intrinsic high volatility of cryptocurrencies presents a significant challenge to valuation. The rapid fluctuations in price make it difficult to determine a fair and accurate valuation for the purpose of asset division. Courts have adopted various approaches, seeking to balance the need for certainty with the principles of fairness. Methodologies include:

- **Date-Specific Valuation:** using the exchange rate on a specific date, typically the date of separation or the date of the final hearing. This method provides certainty but may not reflect the true value of the asset over time.

¹⁵Wright v Wright[2024] EWFC 19.



- **Averaging Techniques:** calculating the average value over a specified period to smooth out short-term volatility. This method reduces the impact of short-term fluctuations but may not accurately reflect the value of the asset at a specific point in time.
- **Percentage Splits:** dividing the assets in agreed-upon percentages to account for future market fluctuations. This method avoids the need for precise valuation but may result in an unequal distribution of assets if the value of the digital asset changes significantly.
- **Implementing Structured settlements:** whereby spousal payments reflect values over time to reach equitable arrangements.

Moreover, the valuation of unique and rapidly evolving digital assets, such as NFTs-collectibles, presents complex challenges beyond those posed by standard cryptocurrencies. Courts must consider factors such as the scarcity, artistic value, and potential future appreciation of the underlying metadata when determining an appropriate valuation method for the purpose of asset division. Given the subjective nature of these factors, valuation can be highly contentious and may require qualified expert evidence. Courts will take under consideration the characteristics of the specific digital asset and the available market data to arrive at a fair and defensible valuation.

E. Tax Implications: Navigating the Tax Landscape

Digital assets may be subject to Capital Gains Tax (CGT), Income Tax, and Inheritance Tax (IHT), thus significantly influencing settlement structuring.¹⁶ Understanding these tax implications is essential for structuring divorce settlements in a tax-efficient manner, and careful planning can help minimise tax liabilities. For example, transferring digital assets to a spouse with lower income may reduce the tax burden at time of liquidation.

¹⁶HM Revenue & Customs, 'Cryptoassets Manual' (GOV.UK, 2023)
<https://www.gov.uk/hmrc-internal-manuals/cryptoassets-manual> | accessed 27 February 2025.



F. Prenuptial Agreements: Planning for the Future

Prenuptial agreements can be invaluable tools for outlining the treatment of crypto-assets in divorce, ensuring clarity and protecting assets in view of the marriage. These agreements can specify how digital assets will be divided in the event of a separation and divorce, providing a level of certainty and predictability that may be lacking in the absence of such an agreement, mitigating potential disputes. However, the enforceability of prenuptial agreements depends on various factors, including whether both parties received independent legal advice and whether there was any duress or undue influence. In the UK, while prenuptial agreements are not automatically legally binding, they are considered highly persuasive and are often upheld by courts if properly drafted and executed.¹⁷

G. Division Approaches

Like any other assets during divorce, digital assets will be divided either via a Court order, a mediation or negotiated agreement. The actual delivery may be executed by direct transfer of the crypto, when both parties have digital wallets set up; by liquidation, selling the crypto and dividing the proceeds; or by offsetting the crypto property with other assets, so that one spouse retains the ownership of the digital asset while the other agrees to receive a larger share of other marital assets to 'balance' the settlement. Note that depending on the value of the crypto, there may not be sufficient real world assets to equalise the other spouse. In making any of the above choices and settlement offers, expert financial advice will be required.

¹⁷ UK Parliament, 'Pre-nuptial Agreements' (Research Briefing SN03752)
<https://commonslibrary.parliament.uk/research-briefings/sn03752/> accessed 15 March 2025.



Estate Planning for Digital Assets: Securing the Digital Legacy

A. Statutory and Regulatory Recognition: Ensuring Legal Compliance

1. **Integration into Estate Law:** The Property (Digital Assets etc) Bill 2024 aims to clarify the legal status of digital assets for probate purposes. This ensures that digital assets are treated as capital property that falls in one's estate and can be valued and passed on to beneficiaries in accordance with the testator's wishes, providing clarity and legal certainty.
2. **Academic Commentary:** Legal scholars have emphasised the importance of incorporating digital assets into estate planning to avoid unintended consequences and potential disputes among heirs.¹⁸ Comprehensive estate planning that addresses digital assets is becoming increasingly essential for HNWIs, ensuring their digital legacy is properly managed. There are many issues surrounding the succession of digital property: from locating, accessing, to preserving and proper delivery. To exemplify: will the heirs (or whom among them) want the crypto asset? Are they prepared to receive it? Is the executor able to understand the nuanced approach needed for accessing, safekeeping, administering, valuing and transferring crypto currencies? Has the testator prepared a detailed 'Letter of Wishes' and 'Access Guide' to find the private keys/seed phrases to access the wallet?

B. Estate Planning Strategies: Protecting and Transferring Digital Wealth

1. **Mandatory Digital Inventory:** as a prudent approach to protect digital assets, testators should maintain a secure, off-chain (pen and paper) inventory of their digital foot-printing, detailing wallet addresses, private keys, platform credentials, and access instructions.

¹⁸D Berkowitz, Estate planning for digital assets: Understanding fiduciary access to digital information (American Bar Association 2017).



Additionally, it is wise to consider utilising multi-signatures or Model Context Protocols or MCPs for wallets' private keys, which require multiple approvals for access, thereby enhancing security and preventing unauthorised use after death.¹⁹ The inventory should be regularly updated and securely stored. Its whereabouts should be made known to the executor/trustee.

2. **Appointment of Digital Executors: A Specialist Role:** Given the technical complexity of administering digital assets, appointing a specialized ad hoc digital executor is advisable. This individual should possess the knowledge and expertise necessary to manage and transfer digital assets in accordance with the testator's wishes and should be familiar with blockchain technology and cybersecurity best practices.

C. Tax Considerations: Minimising Tax Liabilities/Inheritance Tax planning

Strategic estate planning should aim to minimise tax liabilities associated with inheritance tax (IHT) of digital assets. This may involve transferring assets to spouses and via trusts or Family Investment companies, Family Limited Partnerships or other mechanisms to mitigate IHT exposures, highlighting the need for proactive and informed planning. The use of trusts or corporations can also provide greater control over the distribution of digital assets and protect them from creditors. Setting up ad hoc life insurance policies to help with estate cash flow and to cover future IHT liability may also be considered.

¹⁹AM Antonopoulos, Mastering Bitcoin: Programming the Open Blockchain (O'Reilly Media 2017).



D. Ensuring Executor Access: Overcoming Practical Hurdles

Providing executors with clear and comprehensive instructions (Access Guides) for accessing and managing digital assets is essential. This includes providing security information, such as PINs, passwords, and recovery phrases. Clear, unambiguous guidance can prevent costly errors and ensure the testator's wishes are fulfilled.

Emerging Trends and Future Directions: Anticipating Future Challenges

A. Metaverse and Decentralised Finance (DeFi) Assets

The emergence of metaverse assets (e.g., virtual real estate and NFTs certificates of token ownership) and DeFi platforms (e.g., DAOs, lending protocols, yield farming) presents new challenges for legal professionals. Courts and practitioners must develop conceptual technical fluency and methodologies for valuing and managing these novel assets, which often combine elements of tangible and intangible property. The lack of clear legal frameworks for metaverse assets and DeFi platforms creates uncertainty and risk for investors.

B. Global Harmonization and Cross-Border Issues: A Global Perspective

The open, distributed, and permissionless nature of crypto assets necessitates coordinated international regulation. Legal professionals must remain aware of and adapt to evolving international standards and regulations, ensuring that their clients' digital assets are managed in compliance with applicable laws across jurisdictions. Initiatives such as the Financial Action Task Force (FATF) recommendations are driving global standards for digital asset regulation. However, the lack of consistent regulation across jurisdictions creates opportunities for regulatory arbitrage and increases the risk of cross-border disputes.



The Role of Legal Professionals Specialising in Digital Assets for High-Net-Worth Families

Legal professionals specialising in digital assets play a significant role for HNWLs, focusing on the legal aspects of cryptocurrency and blockchain technology. Their expertise spans wills planning, divorces proceedings, and wealth management, thus addressing the unique challenges and complexities associated with digital assets' ownership. Acknowledging challenges related to volatility, regulatory uncertainties, and the potential for unethical or illegal conduct, their multifaceted role includes:

- **Divorces:** helping to identify, characterize and accurately value crypto assets, can be challenging due to their volatility. Ensuring fair division of crypto assets, often through property adjustment orders.
- **Wills and Estate Planning:** αAssisting in including crypto assets in discovery and wills/trust drafting , ensuring these are effectively integrated into estate plans. This involves providing advice and appropriate language on the specific clauses and provisions needed to address digital assets. Ensuring executors have the necessary powers to access and gather information to manage these assets post-mortem and advising on the complex legal and tax implications unique to crypto assets.
- **Divorces:** Helping to identify and accurately value crypto assets, which can be challenging due to their volatility. Ensuring fair division of crypto assets, often through property adjustment orders.
- **Wealth Management:** Providing legal advice on how to properly structuring ownership before investing in cryptocurrency, including navigating complex regulatory landscapes, structuring investments within trusts or other vehicles to optimize tax benefits and legal protections, and ensuring compliance with evolving regulations.



Conclusion: The Path Forward for Legal Professionals

The rise of clients' digital assets ownership presents both significant opportunities and challenges for legal professionals advising high-net-worth individuals. By staying informed and cultivating competence on the latest developments in blockchain technology, digital asset regulation, and forensic techniques, and by developing a multidisciplinary approach that combines legal expertise with financial and technical knowledge, legal professionals can effectively protect and manage the digital wealth of their clients.

Understanding the complexities of digital assets in UK divorce and estate planning requires a proactive, multidisciplinary approach, as the digital space faces unique challenges including crypto volatility, regulatory uncertainties, and potential fiduciary misconduct.

This article recommends that:

1. Policymakers should prioritise the development of clear and comprehensive legal frameworks for digital assets, and continue to address issues such as property rights, valuation, and taxation.
2. Legal professionals should invest in training and education to develop expertise in blockchain technology, digital asset regulation, and forensic techniques.
3. HNWIs should seek proactive legal advice to ensure that their digital assets are properly managed and protected in the event of divorce or death.

It is important to note that the complexities of digital assets are not unique to the UK, as they will differ with jurisdictional nuances. While this discussion focuses on UK law, it recognises the rapidly changing nature of the digital asset landscape. Therefore, it is advisable to examine the cross-border implications of digital assets and consider the potential for international harmonisation of legal frameworks. As the legal and tax landscape surrounding digital assets continues to evolve, ongoing vigilance and adaptation are necessary. As Alan Turing noted:



“Machines take me by surprise with great frequency.” By adopting a proactive and multidisciplinary approach to their digital wealth, high-net-worth clients won’t be *surprised* but will effectively ensure that their digital legacy is secured for future generations.

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Our Services

At Blockchain Lex Group, we provide tailored services to address the unique challenges of digital assets in divorce and estate planning, including:

- **Digital Asset Identification and Disclosure:** Assistance with compliance under Rule 9.14 of the Family Procedure Rules 2010, including forensic tracing of cryptocurrencies and other digital assets such as NFTs.
- **Blockchain Forensic Analysis:** Public ledger tracing, wallet identification, and device forensics to uncover concealed digital assets.
- **Tax-Efficient Settlement Structuring:** Strategies to minimise tax liabilities in asset division or inheritance transfers.
- **Prenuptial and Postnuptial Agreements:** Drafting agreements that address the division and protection of digital assets.
- **Digital Legacy Management:** Creation of secure inventories for private keys and access credentials to ensure executors can manage digital assets effectively.
- **Cross-Border Asset Coordination:** Legal support for managing digital assets across multiple jurisdictions, addressing regulatory compliance challenges.
- **Emerging Asset Advisory:** Offering expert advice on new investment areas like virtual properties, organizations run through blockchain technology (DAOs), and financial services that operate without traditional banks (DeFi).

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