



Private Law in the Digital Economy

Faculty of Law, The University of Hong Kong

WEBINAR
Friday 4 Sept 2020 | 4pm – 6pm HKT

The digital economy raises many interesting issues in private law. These include how best to characterise the transfer of blockchain securities, and whether cryptoassets can be the subject matter of trusts, a point considered in a landmark decision in *Rusco v Cryptopia Ltd (in liq)* [2020] NZHC 728. There is burgeoning interest in the roles of specific performance and rescission in smart contracts that automatically execute the agreement of the parties. The exciting application of blockchain technology in financial transactions and complex supply chains also accentuates the need for safe and efficient legal frameworks. In this virtual event, commentators from the academy, the profession and the judiciary share their views on these challenging issues.

SPEAKERS



David Fox holds the Chair of Common Law at the University of Edinburgh. Before coming to Edinburgh, he was for many years a Fellow of St John's College in the University of Cambridge, where his teaching touched on most aspects of private law. He is a door tenant at Maitland Chambers in Lincoln's Inn. He is a contributor to the trust law sections of *Snell's Equity*; the author of *Property Rights in Money* (Oxford 2008); and the joint editor with W Ernst of *Money in the Western Legal Tradition: Middle Ages to Bretton Woods* (2016), and with S Green, *Cryptocurrencies in Public and Private Law* (2019).



Kelvin F K Low is Professor of Law at City University of Hong Kong. He is a co-author of the 2nd edition of *The Law of Personal Property*, and the 3rd and 4th editions of *Tan Yee's Principles of Singapore Land Law* and has published leading journals such as the *Law Quarterly Review*, the *Modern Law Review*, the *International & Comparative Law Quarterly*, the *American Journal of Comparative Law*, *Melbourne University Law Review*, *Lloyd's Maritime and Commercial Law Quarterly*, and *Legal Studies*. His writings have been cited by leading texts as well as various courts and Law Commissions. He is presently a co-editor of *Trust Law International* and is the co-editor-in-chief for the *Asia Pacific Law Review*.



Jeannie Paterson is Professor at Melbourne Law School. With various publications, her research specialises in the areas of contracts, consumer rights and consumer credit law, as well as the role of new technologies in these fields. Prof Paterson is also the co-director of the Centre for AI and Digital Ethics, a collaborative research and teaching centre at the University of Melbourne, and co-leader of the Digital Ethics research stream at the Melbourne Social Equity Institute.



Cameron Whittfield is PwC's AsiaPac head of digital and technology law. He has 24 plus years experience, across multiple jurisdictions, advising companies, regulators and governments in relation to technology law, telecommunications, outsourcing and technology M&A. Cameron also advises on strategic procurement, supply chain management, data / cyber security, digital assets / cryptocurrency, blockchain solutions and the ethics / regulation of AI. He is an Honorary Senior Fellow at Melbourne University, teaching "New Technology Law" at Melbourne Law School and in 2019 he was named "Technology Partner of the Year" (at the Australian legal partner awards).



Justice Anselmo Reyes practices as an arbitrator and is an International Judge of the Singapore International Commercial Court since January 2015. He was Professor of Legal Practice at the University of Hong Kong from October 2012 to September 2018. Before that, he was a judge of the Hong Kong High Court from September 2003 to September 2012, when he was in charge of the Construction and Arbitration List (2004-8) and the Commercial and Admiralty Lists (2008-12). He was also Representative of the Hague Conference on Private International Law's Regional Office Asia Pacific from April 2013 to July 2017.

PROGRAMME – click [here](#) for the abstracts of the presentations

4:00pm	Welcoming Remarks Fu Hualing, Interim Dean, Faculty of Law, HKU
Property, Trusts and Cryptocurrency (Chair: Lusina Ho, HKU)	
4:05pm	<i>Tokenised Assets in Private Law</i> David Fox, Edinburgh Law School
4:25pm	<i>Trusts of Cryptoassets</i> Kelvin Low, School of Law, CityU HK
4:45pm	Q&A
Contract, Cryptocurrency and China (Chair: Giuliano Castellano, HKU)	
4:55pm	<i>Bringing Smart Contracts to an End: Questions of Specific Performance, Rescission and Restitution</i> Jeannie Paterson, Melbourne Law School
5:15pm	<i>Leveraging Blockchain Technologies to Empower Digital Asset Innovation and Build Trust / Efficiency in Critical Supply Chains</i> Cameron Whittfield, Partner, PwC, Melbourne
5:35pm	Q&A
5:50-6:00pm	Concluding Remarks Justice Anselmo Reyes, International Judge, Singapore International Commercial Court

REGISTRATION

Register at <https://rb.gy/j9iqdc>

or scan the QR Code.

Registration is free. All are welcome.



ACCREDITATION

CPD points (Law Society) being applied for

Zoom link for the webinar will be available to attendees 2 days before the event. For enquiries, please contact Victoria Kwok at vvv@hku.hk.

ABSTRACTS

Tokenised Assets in Private Law

David Fox, Edinburgh Law School

Tokenisation is a recent development in distributed ledger technology systems. Assets that exist off the ledger system, such as securities, are represented as a token on the system as a way of trading and transferring the asset. Many tokenised assets have been analogised to documentary intangibles, even though they have no tangible existence and are incapable of physical possession. The speaker suggests that they are better analysed as purely intangible rights capable of transfer by assignment or novation.

Trusts of Cryptoassets

Kelvin Low, School of Law, The City University of Hong Kong

The birth of bitcoin in the Great Recession of 2008 appealed to cypherpunks and libertarians distrustful of government. Together with copycat altcoins, the volatility of cryptoassets has drawn interest from investors and speculators who did not share in these ideals, including trustees, raising four questions. First, can cryptoassets be the subject-matter of trusts? Secondly, if so, how may the rules relating to validity be applied to cryptoassets? Thirdly, is such an investment permitted under the terms and/or governing law of a particular trust? Finally, what must trustees be aware of in deciding whether to invest in this new asset class?

Bringing Smart Contracts to an End: Questions of Specific Performance, Rescission and Restitution

Jeannie Paterson, Melbourne Law School

While much hype has surrounded smart contracts, largely due to their association with blockchain technologies, the essential distinguishing feature of smart contracts is the automation of performance obligations. Despite the hype of fully self-executing contracts, the reality is that smart contracts will usually be encased in traditional, non-automated rights and obligations. This means that the possibility of breach or repudiation cannot be eliminated. These issues may, for example, arise through coding errors or through human vagaries, disagreement, change of mind or inability to perform. Interesting and unique questions of remedy arise at this juncture. These have both practical and doctrinal elements. How is a smart contract, which is programmed to run until completion of the transaction, brought to a premature end? If this cannot be done how does a court unwind the transaction and what is the role of restitutionary relief? Should a court compel the parties to continue to perform to keep up, so to speak, with the performance of the smart contract? Or is automation treated merely as a technical aspect of performance rather than defining the character of the contract. These kinds of questions raise the importance of design in both the coding of the automated aspects of performance and the drafting of the rights and obligations wrapped around that automated performance to ensure the performance expectation is compatible with relevant law and legislation.

Leveraging Blockchain Technologies to Empower Digital Asset Innovation and Build Trust / Efficiency in Critical Supply Chains

Cameron Whittfield, Partner, PwC, Melbourne

Blockchain technologies have moved beyond their initial hype and are now creating exciting opportunities for all participants involved in financial transactions, trade in digital assets and complex supply chains. Many countries and companies are now investing significant time and resources to fully realise these opportunities. The future is looking increasingly "distributed" and legal frameworks need to keep up. It is now key that the courts, the legislature and regulators understand the potential use cases and look to encourage safe, efficient and effective legal frameworks.