

Property rights to Bitcoins – Abstract

The paper addresses the legal treatment of Bitcoins under German property law. These virtual units were designed as an alternative to a centralized financial system at the time of the financial crisis in 2009. They enable the transfer of values without a centralized payment processor such as a bank. In doing so, they pose challenges to the legal system at various points.

One of these challenges is the question of how Bitcoins can be assigned to a legal subject. For things as defined in § 90 of the German Civil Code (BGB), property rights answer this question: they assign the power of disposal over a thing to its owner. Property rights are transferred by legal transaction.

However, the BGB from 1900 has chosen a narrow concept of a thing with § 90 and only physical objects are contained. According to § 903 BGB, only they are accessible to property rights. Bitcoins, on the other hand, are certainly not physical. The question arises whether they are nevertheless accessible to property rights. This question is to be answered in the present work.

According to the clear wording of §§ 90, 903 BGB, only physical objects are accessible to ownership. Hence, only a judicial analogy comes into consideration if there is to be a property right to Bitcoins. A judicial analogy requires a comparable interest between the matter regulated by the law and the unregulated matter.

Therefore, the paper comprehensively examines the German property system in the BGB, other private law and the constitution and analyses whether Bitcoins fit seamlessly into it. For this purpose, the various interests of the market participants are considered and the will of the legislator is explored.

It appears that Bitcoins are indeed comparable to physical objects to such an extent that an analogous application would cautiously resolve the arising conflicts of interest. The legislator chose the narrow concept to limit the property rights to such objects over which an exclusive factual power can be exercised. The technology of Bitcoins also allows an exclusive factual power over them. It can therefore be assumed that the legislator would have made Bitcoins accessible to property rights, if they had known of such a phenomenon. In addition, Bitcoins are protected by Article 14 of the German Basic Law (GG) and this article stipulates in form of an institution guarantee (*Institutsgarantie*) that the private law must provide a property order for Bitcoins.

As a result, it is not only in the interest of the parties to recognize a property right to Bitcoins. It also corresponds to the presumed will of the legislator and is stipulated by the constitution. Thus, in analogous application of § 903 BGB, there is a property right to Bitcoins.