



The Hague Academy of
International Law's Advanced Course in
Hong Kong – 2nd Edition

Judgments Convention

Crypto Economy and International Law (II)

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The Private International Law of the Blockchain



Private Law Problems of the Crypto Economy

endogenous problems

- torts
- mistake
- fraud
- lack of capacity

exogenous problems

Private Law Problems of the Crypto Economy

- inheritance
- bankruptcy



Which National Law Applies?

- Private International Law (PIL)
- classic rules work **in the majority of cases**
- example: contract of sale paid in bitcoins – application of
 1. the law chosen by the parties
 2. in the absence of a choice, the law of the party that provides the characteristic performance



Which National Law Applies?

- more difficult for questions of **property law**
 1. *lex rei sitae*
 2. *lex registri*
 3. *lex conto sitae*
- the classic rules do not yield a satisfactory response

Elaboration of a new rule of PIL

national law

- USA
- Switzerland
- Germany

international law

UNIDROIT Principles on Digital Assets and Private Law (2023)



Scope of the New Rules

controllable electronic records

- USA

crypto-assets

- Switzerland

digital assets

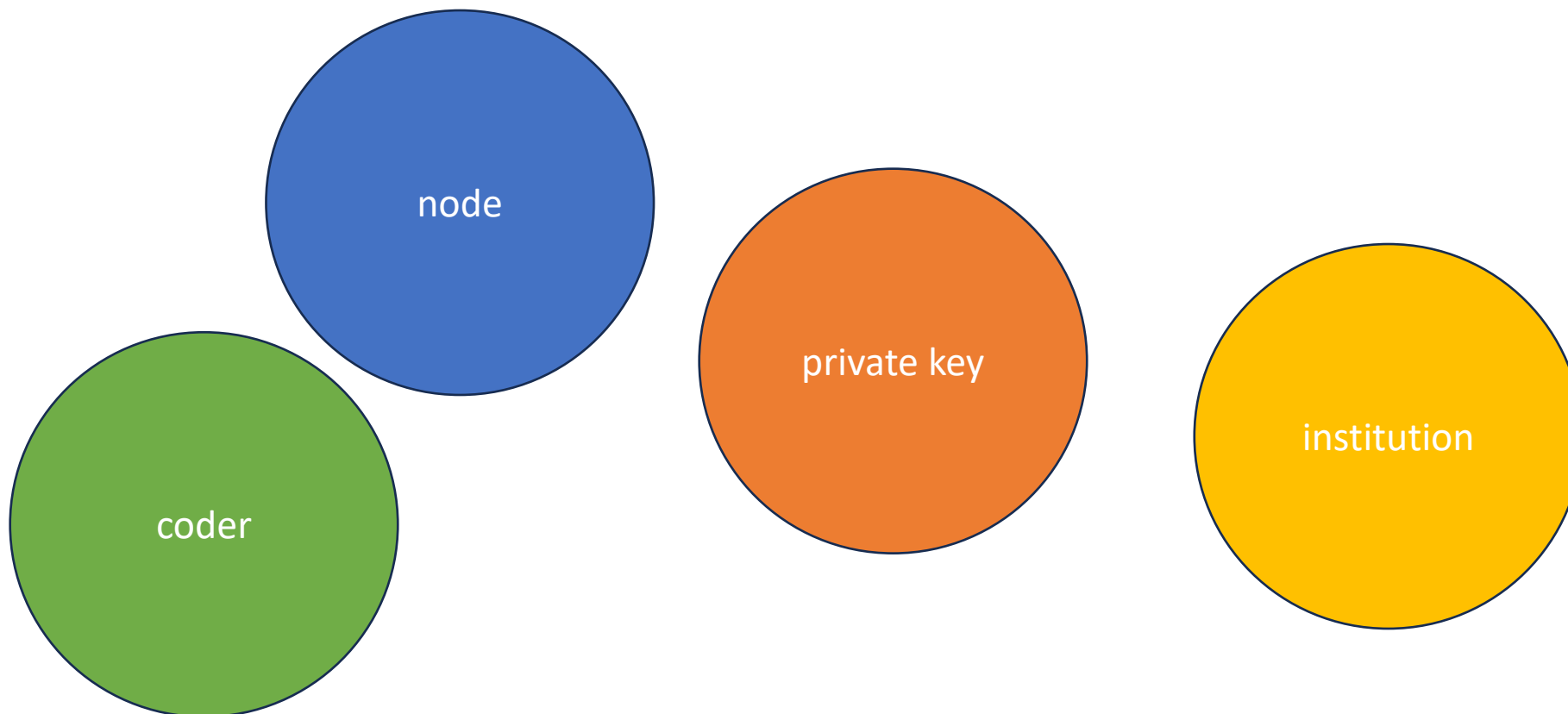
- UNIDROIT

virtual online assets

- China



Connecting factors that do **not** work



Connecting factors that do work

party autonomy

- UNIDROIT, USA

place of the issuer

- UNIDROIT

place of the custodian

- UNIDROIT



What if none of these factors is met?

- habitual residence or place of business of the person controlling the asset
- English and Singapore case law

High Court of Justice for England and Wales

Tulip Trading Limited v Wladimir van der Laan et al, [2022] EWHC 667 (Ch)

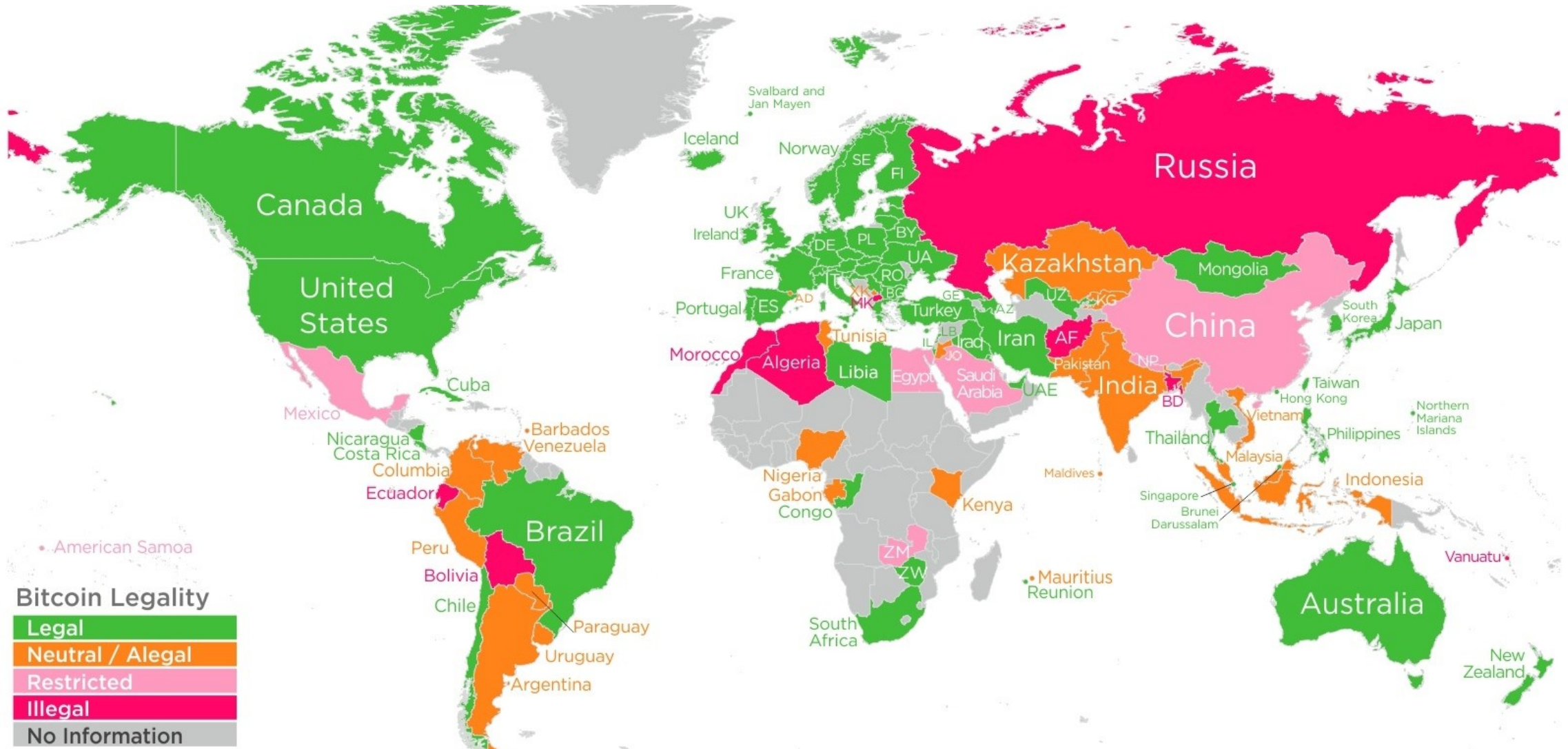
High Court of Singapore

Cheong Jun Yoong v Three Arrows Capital Ltd, (2024) SGHC 21



Towards Global Law for a Global Phenomenon?

Regulatory status of Bitcoin





Utopia

- a global solution for a global phenomenon
- ideal:
 - 1. global uniform rules** for the blockchain
 - 2. uniform interpretation**
 - 3. coordination and cooperation** of states in their application

International organisations harmonising the law of the crypto economy

- regulation



- private law



The Harmonisation of Regulation

Financial Action Task Force (FATF)

- agenda: fighting anti-money laundering and terrorism financing
- Guidance on Virtual Currencies (2015)
- customer due diligence
- “travel rule”





The Harmonisation of Regulation

Financial Stability Board (FSB)

- agenda: protecting financial system against crises
- Assessment of Risks to Financial Stability from Crypto-assets (2022)
- High-level Recommendations for the Regulation, Supervision and Oversight of Global Stablecoin Arrangements (2022)



The Harmonisation of Regulation

Bank of International Settlements (BIS)



- agenda: provide services to central banks and facilitate international monetary and financial cooperation
- Report on Central Bank Digital Currencies (2018)
- Prudential rules (“Basel 3”) on the treatment of banks’ cryptoasset exposures (2022)



The Harmonisation of Private Law

International Institute for the Unification of Private Law

- Principles on Digital Assets and Private Law (2023)
- proposal to harmonise certain aspects of property law
 - bona fide acquisition
 - protection in insolvency
 - secured transactions
 - relations with custodian
 - conflict of laws
- many gaps; not binding





The Harmonisation of Private Law

Hague Conference on Private International Law

- Project HCCH-UNIDROIT on the Law Applicable to Cross-Border Holdings and Transfers of Digital Assets and Tokens
- Project on the implications of Central Bank Digital Currencies (CBDC) for private international law
- Project on Digital Tokens

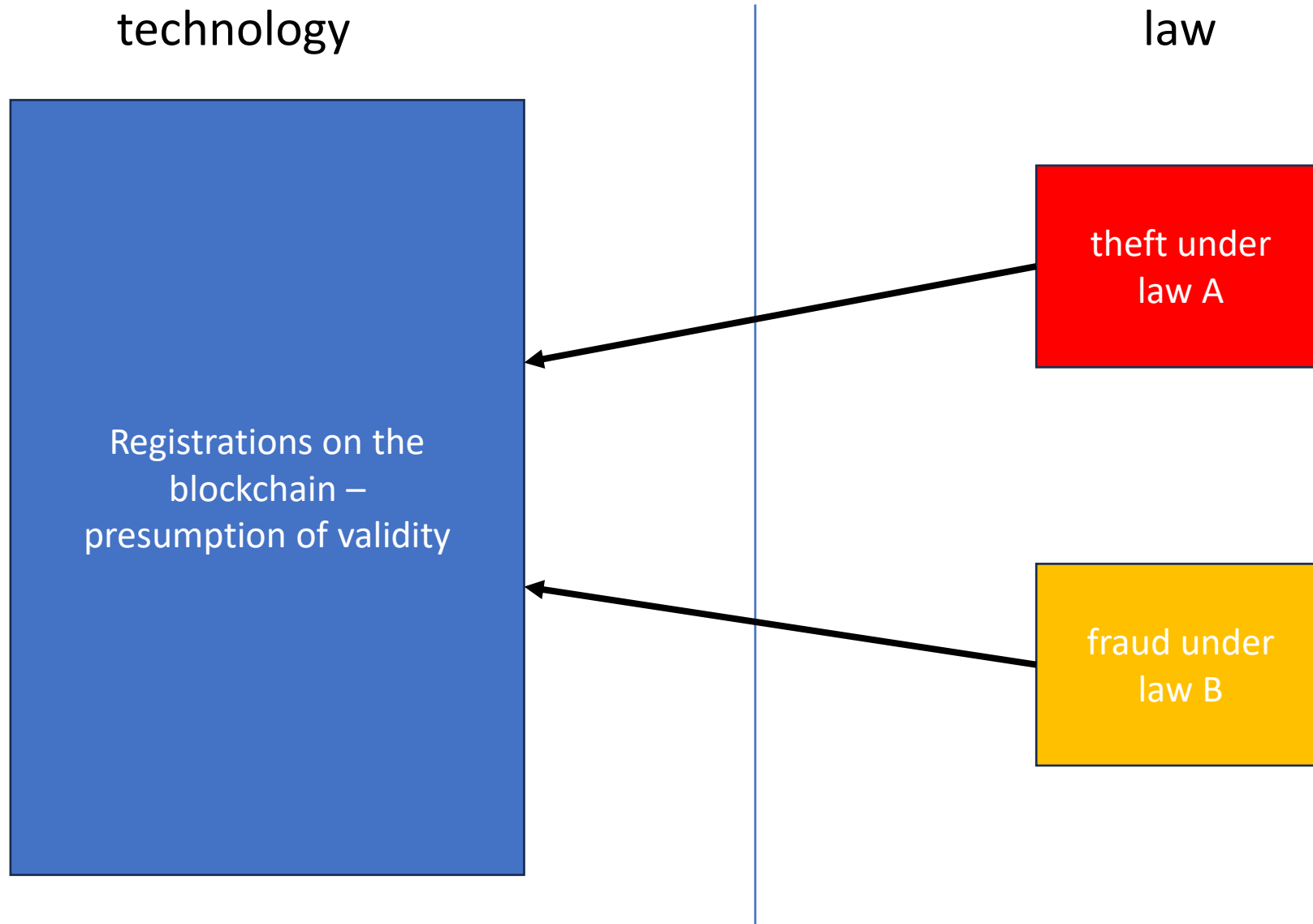




Towards a New Balance between Law and Technology

The blockchain as a register of private rights

- recognition of the recordings on the blockchain
- correction only where necessary (e.g. torts, crimes)
- advantages:
 1. uniform legal status
 2. less problems of PIL
 3. cost savings





Conclusion

- the crypto economy needs legal certainty
- the blockchain should be recognised as an authentic register of private rights
- innovation maybe a driver for the evolution of global law