

ENGLAND AND WALES / JUDGMENT

## Lakeman, R. v [2026] EWCA Crim 4 (14 January 2026)

[2026] EWCA Crim 4

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Case No: 202501528/B3

IN THE COURT OF APPEAL (CRIMINAL DIVISION)

ON APPEAL FROM THE CROWN COURT AT CAMBRIDGE

His Honour Judge GREY

Royal Courts of Justice

Strand, London, WC2A 2LL

14 January 2026

B e f o r e :

LORD JUSTICE POPPLEWELL

MR JUSTICE SOOLE

and

HIS HONOUR JUDGE MAYO DL

Between:

REX

Appellant

- and -

ANDREW LAKEMAN

Respondent

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Ms S GAUNT & Ms F KENYON for the Appellant

Mr A EISSA KC for the Respondent

Hearing date: Friday 14th November 2025

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HTML VERSION OF APPROVED JUDGMENT  
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Lord Justice Popplewell :

### **Introduction**

The issue in this case is whether "gold pieces" as a form of wealth in a video game constitute property within the meaning of s. 4 of the Theft Act 1968.

### **The game**

The game in question is Old School Runescape, which is a role-playing game developed and published by Jagex Ltd ('Jagex'). It is played online by a large number of players worldwide, typically in excess of 100,000 at any one time. Each player has an account protected by a username and password of their own choosing. In the game they have an avatar which interacts with other players' avatars and non-player avatars, such as humans, vampires, goblins and giants, in a fictional realm with multiple kingdoms. There are various forms of the game, but in its essential conception a player needs to build up in-game wealth in order to improve their avatar's capabilities and access additional levels in the form of available quests. The in-game wealth can be achieved in several different ways. Players can accumulate wealth in the form of tokens which are, or can be converted into, gold pieces, by performing in-game tasks (e.g. woodcutting or mining). This can be a time consuming process in building up the in-game resources necessary to achieve a desired skill or level or the ability to perform a particular task. Players can also transfer gold pieces between each other within the rules of the game by two methods. There is an anonymous "grand exchange" by which gold pieces may be transferred in exchange for consumables or other items of value in the game, such as a cloak or amulet which strengthens the player's avatar. They may also be transferred by a direct player to player transfer provided the players are within close proximity within the game. A player may also buy from Jagex a bond (at the time costing £6) which is redeemable for 14 days of game-time membership. Such bonds can

be, and often are, transferred on the grand exchange in exchange for gold pieces (a bond currently being worth about 13 million gold pieces). In this way, and only in this way, the game rules allow a player to use fiat currency to generate gold pieces in the game. The number of gold pieces generated by a bond might take some 15 hours to earn by completing in-game tasks.

The rules of the game do not entitle the players to cash in their in-game wealth with Jagex for fiat currency; and they expressly forbid any sale outside the game. Nevertheless gold pieces have a real world value because they are regularly bought and sold outside the game, despite this prohibition. Typically the vendor and purchaser will negotiate the terms of a sale off-line, either through one of a large number of third party websites dedicated to trading in-game wealth of this kind or on a platform such as Discord, a chat platform communications network used by gamers. The gold pieces are then transferred from the vendor to the purchaser in-game by player to player transfer, with the vendor being paid off-line by a fiat currency or cryptocurrency transfer. At the time of the alleged offences an offline purchase would cost the purchaser about £2.70 for the same number of gold pieces as would be generated by a £6 bond purchased from Jagex.

## The software

Gold pieces exist in a virtual world. In the real world they are visual and functional manifestations of software comprising coded digital data. Each allocation of gold pieces to an individual player's account exists in a digital ledger held on Jagex's servers in the form of such coded data. It is instantiated, that is to say that what appears functionally in a player's account as a particular volume of gold pieces is a product of a set of coded data which attributes them to that particular player.

Jagex uses two types of source code in the game. One is written in Jagex's proprietary source code called Runescript developed by Jagex's software engineers. The copyright in such code belongs to Jagex and restrictions on its use are contained in an End User Licence Agreement and Terms and Conditions (as to which see below). This code governs the commands in the game. The other source code is written in JavaScript, the well-known and widely used programming code. Jagex uses JavaScript to create what it calls its 'game engine' which carries out the command instructions written in Runescript. It appears from the End User Licence Agreement that Jagex also uses various other forms of software licensed from third parties. A player's holding of a quantity of gold pieces on the digital ledger on Jagex's servers comprises code in which Jagex holds no copyright. At one stage the prosecution contended, amongst other things, that Jagex had a copyright interest which was relevant property falling within s. 4 of the Theft Act. However in argument before us, Ms Kenyon expressly confirmed that it was not contended by the prosecution that Jagex had a proprietary copyright interest in the instantiated data which reflected a quantity of gold pieces in a particular player's account.

## The contractual and licencing framework

The evidential position concerning the contractual and licensing framework is unsatisfactory. Mr Bridges, a Jagex coder whose statement identifies the coding position we have described, refers to the copyrighted code being subject to an End User Licence Agreement and to Terms and Conditions. The oral argument was conducted before us by both parties pointing to and relying upon particular passages in a number of different documents holding one or other of these titles, which were not in identical form. The documents were disclosed as part of the prosecution case, and it seemed that the parties agreed that the terms to which they referred reflected the relevant contractual and licencing framework, notwithstanding that there does not appear to have been any explicit agreement as to the factual basis on which the preliminary issue of law fell to be decided by the Judge. However it emerged from written submissions after the hearing of the appeal that the Respondent did not accept the admissibility, and therefore evidential status, of the documents relied on for the contractual and licencing framework (although passages in these had been relied on more heavily by the Respondent than by the prosecution in its arguments before us and below).

There are different versions of three types of document available on the Digital Case System. They are entitled (1) Terms and Conditions; (2) Rules of Conduct of Runescape; and (3) End User Licence Agreement. They were not provided by Jagex (with one exception) but obtained by DC Mckeane, the officer in the case, from a website called "Wayback Machine" which seeks to catalogue internet pages from the past. The Terms and Conditions documents obtained by this method have iterations "captured at" at successive dates, two of which are within the indictment period for Counts 1 and 2 (17 March to 29 July 2018). One is "captured at" 20 March 2018 and one at 23 July 2018. The only version of the Rules of Conduct comes from a link embedded in the Terms and Conditions captured at 20 March 2018. The only End User Licence Agreements obtained are from 2020 which post-dates the indictment period. One is described by DC Mckeane as having been provided by Jagex and "dated May 2020 and shows as EULA version 1.0" although neither the date nor version number are apparent from the document exhibited to DC Mckeane's statement. It applies to "Runescape Client" software. The other was obtained from Wayback Machine captured at October 2020 but entitled "Version 2.0 (dated 19 May 2020)". It applies to "Runescape Client and Old Runescape Client" Software.

We will proceed on the basis that the relationship between Jagex and the players of the game was at the material time governed by (i) the first version of the Terms and Conditions captured at 20 March 2018 ('the T&C'); (ii) the Rules of Conduct embedded in it ('the Rules'); and (iii) the earlier version of the End User Licence Agreement which applies to "Runescape Client" software ('the EULA'). To the extent that the true evidential position may turn out to be different, and that any such difference would be material to our conclusions, which we very much doubt, the parties will be free to argue that our decision is not determinative. The remainder of what we say below is subject to that caveat.

We have set out the material terms of these three documents in the Appendix to this judgment, because they are lengthy. If contractual, the following were the most relevant terms agreed between Jagex and each player of the game.

- (1) The player was granted a non-exclusive licence to use the software which was revocable by Jagex at any time (EULA para 1.1, T&Cs clause 7);
- (2) The licence conferred no title or ownership to the software or to the Jagex Products, and it was agreed that the player had no ownership, title or other property interest in any Jagex Product (T&Cs clause 7 and clause 8(1) and (3)). Jagex Product is defined in T&Cs clause 2 to be the game as a whole, rather than any particular features such as virtual currency, including gold pieces. The para 2 definitions draw a distinction between Jagex Products and Virtual Currencies, the latter being something which can be purchased in a Jagex Product. It appears to us that these provisions do not amount to a contractual agreement that the player has no property interest in the gold pieces if such property interest would otherwise exist at law.
- (3) Virtual currency does not have an inherent or real world monetary value or reflect any stored monetary value (T&Cs clause 14(6) and (7)). It can only be redeemed in the game (T&Cs clause 14(4)) and sale or gifting of gold pieces in the real world is forbidden and not recognised by Jagex (T&Cs clauses 8(4), 14(7)). Any attempt at real world trading is a serious breach of a player's agreement with Jagex (the Rules). Jagex will not redeem or provide real world money for virtual currency (T&Cs clause 14(7)), even where it is lost as a result of the player being subject to in game scamming or withdrawal of the Jagex Product (T&Cs clause 15(1)).
- (4) All intellectual property rights in any game content including virtual currency are the property of Jagex or its licensors (T&Cs clause 8(2)). Although that paragraph refers to "intellectual property

or other

rights" it appears to us, from the heading and content of the clause as a whole (see 8(1)), that it is directed to intellectual property rights or similar rights, rather than to proprietary rights generally which might otherwise exist in a virtual currency. The status and treatment of virtual currencies is addressed specifically under clause 14.

- (5) Virtual currency is not the game player's "own private property" but is "a measurement of the extent of [their] licence in a Jagex Product" (T&Cs clause 14(6)). The latter phrase is problematical because the number of gold pieces do not in any meaningful sense

measure the extent

of the player's licence in the game; they are merely one feature of the content of the game. It appears to us that this term is at best ambivalent as to whether as a matter of contract the currency as intangible property (if such it be) is property of the game player.

- (6) Jagex can at any time cap, restrict access to, or delete virtual currency or anything acquired by means of virtual currency (T&Cs clause 12(2), 14(9)), or decide to end the currency in part or in whole (T&Cs clause 14(11)).

We have expressed some provisional views as to the construction of some of these terms, although we heard no argument on that aspect of them. We do not need to reach a concluded view, because for the reasons which we explain below, the question whether the gold pieces are property within the meaning of s. 4 of the Theft Act is not determined by private property law rights in civil law.

### The case against the Respondent

The Respondent worked for Jagex as a content developer. He had no role in the management of player accounts and was not authorised to access players' accounts. Access to players' accounts is afforded to an account recovery team within Jagex, typically for the purpose of requests for resetting of passwords. The case against the Respondent is that by hacking and/or using credentials of members of the account recovery team he obtained access to 68 accounts in which players had accumulated very substantial in-game wealth; and then stripped those accounts of hundreds of billions of gold pieces and transferred them to purchasers to whom he sold them off-line, receiving in return Bitcoin and fiat currency. Jagex has identified the number of gold pieces stripped from players' accounts as about 705 billion with a real world trading value of £543,123.

The Respondent faces a five count indictment. Count 2 charges theft contrary to s. 1(1) of the Theft Act 1968, the particulars being that "between the 17

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day of March 2018 and the 29

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day of July 2028 he stole a quantity of gold pieces from the online game Old School Runescape to an approximate value of £543,123 belonging to Jagex Ltd."

Section 1(1) of the Theft Act provides that "A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and "thief" and "steal" shall be construed accordingly." Section 1(3) provides that sections 2 to 6 have effect as regards the interpretation and operation of the section. Section 4 is headed "Property" and contains a definition of property for the purposes of s. 1(1). Section 4(1) provides:

" "Property" includes money and all other property, real or personal, including things in action and other intangible property."

Subsections 4(2) to (4) go on to exclude from the definition of property certain specific things in certain circumstances, namely land, wild mushrooms flowers and foliage, and untamed wild creatures.

Section 5 defines what is meant in s. 1(1) by property "belonging to another". It provides:

"Property shall be regarded as belonging to any person having possession or control of it, or having any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest)."

Count 1 charges securing unauthorised access to computer material with intent to commit an offence, contrary to section 2(1)(a) of the Computer Misuse Act 1990. The particulars identified that it was "with intent to commit an offence to which section 2 of the Computer Misuse Act 1990 applies, namely the theft of 'in game wealth' (gold pieces) from Old School Runescape accounts". This covered the conduct alleged against the Respondent in gaining access to the 68 customer accounts.

Counts 3 to 5 charge money laundering offences. Count 3 charges an offence contrary to s. 327(1)(c) of the Proceeds of Crime Act 2002 ('POCA') by converting the gold pieces into Bitcoin as the proceeds of crime. Count 4 charges an offence of possessing the Bitcoin as proceeds of crime contrary to s. 329(1) of POCA. Count 5 charges an offence of converting the Bitcoin to fiat currency as the proceeds of crime. In each case the crime of which these were alleged to be the proceeds is not particularised in the indictment but it was clearly intended to be the theft referred to in counts 1 and 2, as Ms Gaunt confirmed.

## The procedural history giving rise to the appeal

The defence made an application to dismiss the charges on the grounds that the gold pieces were not property within the meaning of s. 4 of the Theft Act. Both parties treated this as a novel issue of law and wanted the matter to be dealt with by way of a preparatory hearing pursuant to s. 29(1) of the Criminal Procedure and Investigations Act 1996 so as to be able to come to this court by way of appeal, if unsuccessful. The Judge acceded to that course, determining that the case fell within the guidance in

R v Quillan

[2015] 1 WLR 4673

at [6]-[13] as to the use of a preparatory hearing to resolve issues of law which might determine whether a trial was needed at all in lengthy and complex cases. Sections 29 (1) and (2) allow a preparatory hearing to determine an "issue ... likely to be material to the verdict of the jury" The issue of law does not seem to have been precisely stated or formulated prior to the hearing but the Judge treated it in paragraph 8 of his ruling as being the issue raised by the defence seeking a ruling that " 'in game wealth' aka 'gold pieces' within the Old School Runescape game is/are not property and therefore cannot be the subject of the offence of theft".

The Judge ruled in favour of the defence. His reasoning can be summarised as follows. The starting point was the definition of property in s. 4 of the Theft Act. The leading authority on the definition of property is

National Provincial Bank v Ainsworth

[1965] AC 1175

in which Lord Wilberforce said at p.1247G-1248B: "Before a right or an interest can be admitted into the category of property, or of a right affecting property, it must be definable, identifiable by third parties, capable in its nature of assumption by third parties, and have some degree of permanence or stability." The gold pieces fulfilled each of those four criteria. However it was key to whether something can be property that it should also (i) have the characteristics of rivalrousness; and (ii) not amount to "pure information". Rivalrousness is a term popularised in mid 20

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century economics which was adopted as a relevant criterion for whether digital assets should be treated as property by the Law Commission in its Report on Digital Assets published in June 2023 ('the LC Report') and its Supplementary Report published in July 2024 ('the LC Supplementary Report'). The term has been taken up in subsequent cases, notably by the Court of Appeal in

Tulip Trading Ltd v Bitcoin Association BSV & others

[2023] EWCA Civ 83

[2023] 4 WLR 16

. The Law Commission defined a thing as rivalrous "if the use or consumption of the thing by a person, or of a specific group of persons, necessarily prejudices the use or consumption of that thing by one or more other persons."

The Judge held that that gold pieces were not rivalrous and were more akin to pure information. The critical reasoning on rivalrousness was in paragraph 25:

"Gold pieces within [Runescape] are not sufficiently rivalrous to be classed as intangible property. One gold piece is the same as any other, and their supply is infinite. The fact that existing players have wealth does not preclude new players from joining the game and getting more wealth, without taking it from existing players. This means, in my judgment, that even if the Crown is able to prove every single factual assertion that forms the basis of its case, the offences currently charged are not made out in law and I would not be prepared to leave them to a jury."

The critical reasoning on "pure information", at [22], was that unlike a real world currency the supply of gold pieces is in effect infinite.

The Judge gave leave to appeal on written grounds put before him by the prosecution. The arguments were recast in the Grounds of Appeal attached to the Notice of Appeal, in a way which the Respondent contended required further leave from this court. There followed several rounds of submissions on whether the reformulated grounds were or were not outside the original leave granted, with the Crown seeking leave from this court to the extent it was needed. This is a sterile procedural debate. It was not suggested on behalf of the Respondent there was any prejudice in the grounds going beyond those for which the Judge granted leave, if they do so. There was ample notice in writing of the arguments being advanced. This Court has jurisdiction to grant leave if necessary. In a case of this nature and importance it is clearly desirable that we should decide the issue on its merits without regard to procedural skirmishing and we propose to do so.

### Framing the issue

Four preliminary questions arise as to how the issue on this appeal is to be framed. First, are we concerned with "a chose in action" or "other intangible property", or both? Secondly, whose putative property are we concerned with; in particular is it that of the game player or Jagex or both? Thirdly, and relatedly, are we concerned with gold pieces as a visual and functional thing in the virtual world of the game, or with the coded data which gives rise to that visual and functional manifestation, or both? Fourthly, to what extent are we concerned with the nature or definitions of property in the law generally?

(1)

"Chose in action" or "other intangible property"?

Ground 2 of the Grounds of Appeal criticises the Judge for addressing the issue only by reference to whether the gold pieces are "other intangible property" and failing to hold that they are a chose in action in "contract and/or tort" or "as copyrighted material". This argument was advanced orally on behalf of the prosecution by Ms Kenyon. As we understood it, it was an argument that the player had a cause of action against Jagex. As to copyright, she expressly conceded that there was no copyright in the gold pieces, and in any event there can have been no such right in the players so as to give them a cause of action against Jagex rather than vice-versa. No argument was advanced supporting a cause of action in tort. The argument was put on the basis that there was an implied term of the EULA that a player had a right to access their account and to use and have exclusive control over the items in their account including the gold pieces. We cannot accept such an argument. No such implication is necessary for the purposes of the EULA, and indeed is contrary to the terms of the EULA which is expressed to be a revocable licence. In any event the term suggested would be wholly inconsistent with the T&Cs in the ways we have highlighted above, which give Jagex a discretion to cap, withdraw or delete gold pieces. If the gold pieces are to be characterised as property, they must be "other intangible property".

(2) Whose "property"?

The submissions on behalf of the prosecution at times treated the gold pieces as the property of the players from whose accounts they were stripped, and at other times as the property of Jagex. Mr Eissa KC submitted that the only issue was whether the gold pieces were the property of Jagex because the particulars under count 2 alleged that they were property "belonging to Jagex Ltd". This is, in our view, a mistaken approach for a number of reasons. The preliminary issue of law, as argued and decided by the Judge, was not confined to whether the gold pieces were the property of Jagex but whether they were in law property at all, irrespective of whose property they might be. That is the formulation of the preliminary issue which falls to be answered on this appeal. It would be unhelpful to answer the issue of law in narrower terms, both from the point of view of this case, or for other cases in what is recognised to be a novel area of law.

Moreover it is open to the prosecution to advance its case against the Respondent under the current indictment on the basis that the gold pieces constituted the property of the game players. The particulars under count 2 are consistent with the gold pieces being the property of the game players because of the width of s. 5 which allows property to belong to more than one person. The gold pieces can potentially be property "belonging to" Jagex by reason of Jagex, in the words of s. 5, "having possession or control of" them, whilst at the same time potentially being property also belonging to the relevant game player as having a "proprietary right or interest" in them. Counts 1,2,4 and 5 depend upon the commission of a crime under s. 1 of the Theft Act but are not specific or limited as to whose property is involved. If there were any doubt about this it could no doubt be clarified by an amendment to the indictment.

Conversely if the gold pieces are the property of Jagex, they could also belong to the game players who would be persons having control over them, in the words of section 5. It is the player who decides whether and how they will be used in the course of the game, and the fact that Jagex may also have a degree of control by being able to withdraw restrict or delete them does not prevent the player having sufficient control to come within section 5. If the question is whether the gold pieces are property of Jagex, within the meaning of s. 4, it is still necessary to assess their nature and qualities by reference to the position of the players as well as Jagex.

Accordingly in addressing the issue in the appeal, the question is whether the gold pieces are "property" within the meaning of s. 4, whether that be the property of Jagex or the game players; and that question falls to be addressed by reference to the nature of the gold pieces in the game from both Jagex's and the players' point of view.

### (3) Gold pieces or coded data?

Gold pieces exist in the game, which is a virtual world. In the real world they are the visual and functional manifestation of software comprising coded digital data, which in relation to any set of gold pieces in a game player's account take physical form through the mechanisms by which software manipulates hardware, by electrical or magnetic impulses, pixels and so on. As Birss LJ commented in

## Tulip Trading Ltd

at [72] in relation to Bitcoin: "... literally all there is, is software. A physical coin has properties which exist outside the minds of people and in that sense is tangible. Bitcoin is similar. It also has properties which exist outside the minds of individuals, but those properties only exist inside computers as a consequence of the Bitcoin software. There is nothing else."

We consider that the correct approach is to consider whether the gold pieces themselves constitute property, rather than whether the instantiated code which represents them is property. Physical existence is not a necessary ingredient of property, which includes intangible

property; it also includes choses in action, which are a well-known example of property without any physical existence. Although the gold pieces exist in a virtual world they have a real world existence which manifests itself not only in their appearance and use on the screen but in real world trading. They are real functional things distinct from the code which creates them.

The data itself, as distinct from the asset it represents, is not rivalrous, in that the use of the code by Jagex or a player does not stop another person from using it: it may, in theory at least, be replicated on another computer without thereby representing anything of value to anyone. Its value qua data, if any, lies only in such protection as is afforded by the law of intellectual property. By contrast the thing which has value is the functional gold piece controlled by the game player. As we have observed, section 5 contemplates that property may belong to a number of people for the purposes of the Theft Act and that it may be property belonging to someone who merely has control of it.

The position is analogous to that which applies to cryptocurrencies, which are widely regarded as capable of constituting property (as to which see below), and for which the relevant criteria are applied to the functional concept of the cryptocurrency itself rather than to the software which creates it. Bitcoin, for example, consists of coded software which is entirely public and not the property of anyone: the code is public and is applied on a distributed ledger which itself is public. The only private element is the private key. There is no property interest in either the code or its manifestation on the blockchain. The thing which such code represents, however, namely Bitcoin as a currency, is recognised as being capable of amounting to intangible property. See Taylor & O'Flinn 'Bitcoin Burglaries and the Theft Act' [2021] Crim LR 163, 171, 176 emphasising that it is wrong to equate the data representing the cryptoasset with the cryptoasset itself.

The Law Commission explained the position in paras 2.28-2.30 of its Supplementary Report:

"2.28 On one interpretation, all digital things are nothing more than strings of (alphanumeric) data, represented in code by a stored sequence of bytes. On this analysis, those digital things could be said to be nothing more than pure information. If this interpretation were adopted, there could be no property rights in any digital things at all.

2.29 However, crypto-tokens are more than just information. They comprise different components, rather than being purely a data structure. Professor Fox has suggested that a digital asset such as a crypto-token is:

[1]

"An ideational thing containing different components. It is more complex than the £1 coin since it lacks any tangible basis and its most significant properties are matters of digital functionality rather than legal attribution. Like the coin, however, it comprises more than one component. It is grounded in, but not confined to, the technical features of its own digital design. Its outward manifestation is a string of data generated by transactions between participants on a distributed ledger system. But to see the asset as mere data would ignore its larger functionality, just as we would fail to appreciate the full economic or legal significance of a coin by treating it as a mere metal disc."

2.30 Even though each of the individual data elements of a crypto-token can be copied — in the sense that the information can be reproduced on an equivalent medium — the copier does not get the same discrete instance of a crypto-token. Instead, what the copier gets is data in a different system. Even an exact recreation of all the elements of a particular network would result in the creation of a materially identical, yet distinct, network, populated by materially identical but distinct, rivalrous crypto-tokens. One way of thinking about this is to make an analogy with banknotes. Every Bank of England banknote has a unique serial number, but knowing or copying that serial number will not duplicate the function or value of the banknote; that number is of no use except as an intrinsic element of the banknote in question. Similarly, taking the data that makes up a token on a distributed ledger will not replicate the token because the data has no function except as instantiated in the token on the network."

Mr Eissa told us that when a gold piece is "transferred" within the game from player A to player B, the instantiated code allocating it to the account of player A is in fact deleted and replaced by instantiated code allocating it to player B. We do not consider that this makes any difference to the concept of "transfer" of gold pieces or to their potential status as property. As Birss LJ observed in

## Tulip Trading

at [25] there is a similar change to the blockchain code in any "transfer" of Bitcoin which some would describe as the creation of new property, but that does not affect the treatment of Bitcoin as something which is transferrable or as constituting property. When gold pieces are transferred there is a visual and functional transfer. It is immaterial that this is effected by one piece of code being replaced by another on the Jagex servers. Once again, the intangible asset is the functional ideation and to be distinguished from the code which represents it.

The question is therefore whether a gold piece as a visual and functional thing is property, not whether the code which gives rise to its visual manifestation and functionality is property.

#### (4) The nature of 'property' generally and private law rights

Sir Roy Goode KC in his article entitled 'What is Property' in (2023) LQR 139 1 opened with the following:

"The question what constitutes property has bedevilled English doctrine and jurisprudence from time immemorial. Entire volumes and innumerable articles have been devoted to the nature of property and it is not only students who have professed themselves baffled by the arcane mysteries of the subject."

Our task in this case is not as daunting as that might make it sound, because we are not concerned to define what property is, or how to determine it, for all areas of the law. A definition of property serves different purposes in different contexts. As Lord Porter said in

*Nokes v Doncaster Amalgamated Colliers Ltd*

[1940] AC 1014 at 1051:

"In truth the word "property" is not a term of art but takes its meaning from its context and from its collocation in the document or Act of Parliament in which it is found and from the mischief with which that Act or document is intended to deal."

It does not follow, therefore, that for a thing to constitute property for the purposes of a criminal offence it should necessarily do so for the purposes of private rights in civil law. Even within the criminal law, it is necessary to focus on the particular offence in question, because what amounts to property is not defined in the same way for all offences. We are only concerned with the definition in section 4 of the Theft Act, a definition for the purposes of offences under that Act in the criminal law. Other definitions apply in other areas of the criminal law. In the Criminal Damage Act 1971, for example, as originally enacted, property was defined as "property of a tangible nature, whether real or personal....". The restriction of that offence to tangible property was narrower than the Theft Act definition, which might have caused difficulty in relation to damaging computers. However a broad approach to what constituted causing damage, namely impairing the value or usefulness of the tangible property, enabled the court to treat computer hacking as criminal damage to the magnetic particles on a disc despite the absence of any tangible damage to the disc (

#### **R v Whitely**

(1991) 93 Cr App R 25), a decision effectively reversed by a new s.10(5) introduced alongside the introduction of the offences now in the Computer Misuse Act 1990. Another example of a different definition of property in the criminal law is to be found in the Proceeds of Crime Act 2002, section 84 of which defines property as "all property wherever situated and includes (a) money (b) all forms of real or personal property (c) things in action and other intangible or incorporeal property." Although at one stage relied on by the prosecution in this case, the s. 84 definition, including the concept of "incorporeal property" which has echoes of hereditaments, is of no direct application because it is a definition for the

purposes of Part 2 of POCA, dealing with confiscation, not the money laundering provisions in Part 7. Part 2 also now makes specific provision for crypto assets in s. 67ZA and following.

We emphasise the particular focus of the inquiry in this case because there is a danger in treating pronouncements about property in other contexts as determinative or even helpful. The Judge in this case, and the parties, treated the starting point as being what Lord Wilberforce said in

### **NPB v Ainsworth**

, and of actual or potential relevance the UK Taskforce and Law Commission Reports on cryptoassets and digital assets which we consider below. However those were all concerned with personal property rights for the purposes of their recognition and enforcement as private law rights. In our view both the starting point and the central focus of the inquiry in this case ought to be the words of s. 4 of the Theft Act in the context of a statute seeking to criminalise the dishonest taking of things, and the cases and other materials which address it in that criminal context.

There is no conceptual difficulty in something constituting property within the meaning of the definition in s. 4 of the Theft Act but not constituting property over which there are enforceable private law rights. Whilst there are aspects of the law for which a divergence between the criminal and civil law is inherently undesirable (for example the meaning of dishonesty; see

*Ivey v Genting Casinos (UK) Ltd (t/a Crockfords Club)*

[2017] UKSC 67

[2018] AC 391

at [57] and [63]), this is not one of them.

In this context the speech of Lord Steyn in

*R v Hinks*

[2001] 2 AC 241

is instructive. In that case the House of Lords was concerned with whether a transfer of property could amount to appropriation under the Theft Act where it involved what was in private law a lawful transfer under which the transferee acquired an indefeasible proprietary right. Counsel for the appellant identified a number of hypothetical examples which illustrated how the criminal law would be in conflict with the civil law if such an interpretation were to be accorded to "appropriates" in the Theft Act, and argued that there should be no distinction between private law property rights and the application of the Theft Act. In rejecting that argument, Lord Steyn, with whom Lords Slynn and Jauncey agreed, said at pp. 252C-253B:

"My Lords, at first glance these are rather telling examples....

If the law is restated by adopting a narrower definition of appropriation, the outcome is likely to place beyond the reach of the criminal law dishonest persons who should be found guilty of theft. The suggested revisions would unwarrantably restrict the scope of the law of theft and complicate the fair and effective prosecution of theft....

Counsel for the appellant further pointed out that the law as stated in

Lawrence

[1972] AC 626

and

Gomez

[1993] AC 442

creates a tension between the civil and the criminal law.

In other words, conduct which is not wrongful in a civil law sense may constitute the crime of theft. Undoubtedly, this is so.

The question whether the civil claim to title by a convicted thief, who committed no civil wrong, may be defeated by the principle that nobody may benefit from his own civil

or

criminal wrong does not arise for decision. Nevertheless there is a more general point, namely that the interaction between criminal law and civil law can cause problems: compare J Beatson and A P Simester, "Stealing One's Own Property" (1999) 115 LQR372.

### **The purposes of the civil law and the criminal law are somewhat different**

. In theory the two systems should be in perfect harmony. In a practical world there will sometimes be some disharmony between the two systems. In any event, it would be wrong to assume on a priori grounds that the criminal law rather than the civil law is defective. Given the jury's conclusions, one is entitled to observe that the appellant's conduct should constitute theft, the only available charge. The tension between the civil and the criminal law is therefore not in my view a factor which justifies a departure from the law as stated in

Lawrence

and

Gomez.

Moreover, these decisions of the House have a marked beneficial consequence.

While in some contexts of the law of theft a judge cannot avoid explaining civil law concepts to a jury (e.g. in respect of section 2(i)(a)), the decisions of the House of Lords eliminate the need for such explanations in respect of appropriation. That is a great advantage in an overly complex corner of the law." (my emphasis)

Another example of where the criminal law departs from the civil law in its treatment of property for the purposes of the Theft Act is afforded by the position in relation to illegally held drugs. It was confirmed in

R v Smith (Michael Andrew)

[2011] EWCA Crim 66

that illegally held Class A drugs are property within the meaning of the Theft Act and are capable of being stolen. A theft or robbery amongst rival drug gangs can be indicted as such, because the criminal law is concerned with the public order consequences of preventing such behaviour, notwithstanding that it would be contrary to public policy to recognise any property rights for the purposes of civil enforcement between drug dealers. As Lord Judge CJ put it:

"In Smith's Law of Theft, 9th edn (2007), p.80, it is suggested that "public policy which prevents the wrongdoer from enforcing a property right should have no application to criminal proceedings brought in the name of the Crown. The criminal law is concerned with keeping the Queen's peace, not vindicating individual property rights." That observation articulates the principle to be applied in the present appeal."

Moreover section 5 of the Act qualifies the nature of property which may be the subject matter of theft in that it must be property "belonging to another" in the sense there defined. Whilst some aspects of that definition undoubtedly depend upon the civil law as to proprietary interests in property, they do not all do so. In particular property can belong to another when it is in the control of that other, and control need not connote any private law proprietary interest. The same is true of property in the possession of another. Possession and control in section 5 are factual concepts, and not qualified by or dependent upon any legal right to possess or control. They do not depend upon such possession or control being lawful as a matter of civil law: see

R v Woodman

[1974] QB 754

at 758D-E,

R v Turner (No 2)

[1971] 1 WLR 901 at 904,

R v Kelly

[1999] QB 621

at 631E-G.

The fact that civil law concepts do not exclusively govern whose property can be stolen for the purposes of s. 5 supports the view that it does not do so for the purposes of defining what can constitute property capable of being stolen for the purposes of s. 4.

Further, the last consideration mentioned in the speech of Lord Steyn quoted above, that of avoiding complexity for juries, is also here relevant. The parties have argued the issue with which we are concerned, before the Judge and before us, on the basis that it is a question of law for the court whether the gold pieces constitute property, not a question of law for the court as to whether they are capable of amounting to property as a factual question to be left to the jury. We assume for the purposes of this appeal that that is the correct approach. Nevertheless it is not difficult to conceive of circumstances in which it would be a matter for a jury to decide disputed issues of fact and/or make evaluative assessments which were relevant to determination of property rights in civil law, if that were the determinative question. It is obviously desirable that the criteria to be applied in determining whether something is or is not property for the purposes of s. 4 is framed, so far as possible, in terms which do not require difficult issues of the application of civil law principles to be left to the jury to determine.

It is for all these reasons that anything in the contractual documents between Jagex and the players, or in the civil law more generally, which would preclude the player having any enforceable private law personal property rights in the gold pieces, is not determinative as to whether they are property for the purposes of the definitions in the Theft Act.

With that in mind we will examine first what assistance is to be found in the authorities and other materials about property in the criminal context of the Theft Act.

## **The criminal context**

The starting point is the language of section 4. It is an inclusive not exhaustive definition. It is in wide terms so as to be capable of applying to anything intangible provided it can properly be described as property. As s. 1(1) makes clear in terms, it is directed to criminalising something which someone "steals". It is aimed at property in the sense of a thing which someone can steal. The expansive nature of the definition and the criminal context suggests as a starting point that property should be construed as capable of applying to any thing which can as a matter of normal use of language be described as capable of being stolen, unless there are good reasons why such a thing should be excepted.

However, not all things which can colloquially be described as capable of being stolen constitute property within the meaning of the Theft Act. Intellectual property is protected by the Copyright Designs and Patents Act 1988 (the 'CDPA') and is largely designated as a "property right" under s. 1 (copyright) or s. 213 (design right). The rights are protected by statutorily defined acts of infringement, and the criminality of such infringement of copyright, for example, is defined by offences created by s. 107 of the CDPA. We doubt whether such intellectual property is capable of being property which is stolen contrary to the Theft Act, although it is not necessary to express a

concluded view on the question.

What is clear is that it is widely regarded as settled that "property" in section 4 of the Theft Act does not extend to "pure information", including confidential information, on the basis of the decision in

### **Oxford v Moss**

(1979) 68 Cr App R 182. In that case the defendant was a student who had stolen an examination paper prior to an exam, and returned it after he had read its contents. He was charged with theft. The magistrate dismissed the information on the grounds there had been no appropriation of "property". The prosecution case was not that the exam paper itself was the relevant property, because there could not be shown an intention permanently to deprive the owner of it (although see (1979) CLR 119 for an ingenious argument that it could have been). Rather it was argued that the questions to be set (in which there was no copyright) constituted the relevant property as confidential information, relying on civil decisions affirming rights and remedies for infringement of trade and matrimonial secrets. The Divisional Court dismissed the appeal by way of case stated, giving brief ex tempore judgments which cast little light on the rationale for the decision.

The decision, which is not binding on this court, is the subject of an interesting discussion in Smith, Hogan and Ormerod's Criminal Law 17

th

edn at 18.3.2.7, which identifies a number of academic writings on the subject, as well as the fact that the Law Commission proposed legislating to criminalise non-consensual use or disclosure of another's trade secrets in 1997. In Taylor & O'Flinn's article cited above,

### **Oxford v Moss**

is explained on a number of bases: the information in the exam questions is not rivalrous; one person's knowledge of it does not diminish someone else's knowledge of it; information as such is inalienable and unassignable; a fact cannot be "unknown"; the question of who owns a piece of information may be nebulous; and there are concerns about the use of the criminal law or property law to regulate dissemination of information.

In our view the justification for the decision, and the principle it stands for, lies in the fact that what is meant by "pure information" is simply knowledge; and knowledge cannot qualify as property which can be stolen for two reasons. First, it exists simply in a person's head and independently of anything representing or recording it on any form of medium (although it may of course be so recorded, in which case the tangible medium is property and may be stolen, as the exam paper in

## Oxford v Moss

would have been had there been an intention permanently to deprive). If a person knows what day of the week it is, that knowledge could not appositely be described as their property; and no more could their accumulated body of knowledge acquired over time, whether generally or in a specific field of skill or endeavour. The fact that such knowledge sometimes has a quality of secrecy or confidentiality cannot make it property, as cogently explained by Latham CJ in the High Court of Australia

in *United Aircraft Corporation v Federal Commissioner of Taxation*

(1943) 68 CLR 525, 534-5:

"[k]nowledge is valuable, but knowledge is neither real nor personal property. A man with a richly stored mind is not for that reason a man of property. Authorities which relate to property in compositions, [etc], belong to the law of copyright and have no bearing upon the question whether knowledge or information, as such, is property. It is only in a loose metaphorical sense that any knowledge as such can be said to be property. Either all knowledge is property, so that the teaching of, for example, mathematics, involves a transfer of property, or only some knowledge is property. If only some knowledge is property then it must be possible to state a criterion which will distinguish between that knowledge which is property and that knowledge which is not property. The only criterion which has been suggested is the secrecy of the knowledge — it is said that the fact that knowledge is secret in some way creates a proprietary right in that knowledge. I confess myself completely unable to appreciate this proposition as a legal statement. It is obvious that a monopoly of knowledge may be valuable, whether it be knowledge of a place where a person has discovered gold or knowledge of a method or process of making a machine or a chemical product, or of a means of deciphering cryptograms. But is such property knowledge only so long as it is secret? Does it cease to be property when it is communicated to one other person or to two other persons or to two hundred other persons? The value of secret knowledge as such depends upon ability to keep it secret and to use it and the possibility of persuading other people to pay for being let into the secret. These facts, however, do not show that the knowledge is property in any legal sense."

Secondly, knowledge is not something which can be stolen because the transfer of knowledge from A to B does not deprive A of that knowledge or A's ability to use it.

In

## Attorney General of Hong Kong v Nai-Keung

[1987] 1 WLR 1339 the Privy Council was concerned with an appeal from Hong Kong in respect of a conviction for theft under the Theft Ordinance 1970, which was in materially identical terms to the Theft Act 1968, including its definition of property. The export of textiles from Hong Kong was prohibited except under licence, and The Department of Trade and Industry operated an export quota system in respect of such exports. Export quotas were

registered with the department and were transferable for value on a temporary or permanent basis. The defendant was a director and minority shareholder in a company to whom such export quota licence had been granted. Without the knowledge of his co-director, who was the majority shareholder, the defendant sold a large quantity of the company's quotas permanently transferring them to a textile company which had as its proprietor the defendant's co-director in a recently incorporated textile exporting company. The defendant was charged with theft of the textile export quotas, the prosecution case being that that he had acted dishonestly by selling the quotas at a gross undervalue. The defendant was convicted, but the Court of Appeal of Hong Kong allowed his appeal and quashed his conviction holding that being authorised to sell quotas on behalf of the company he had not dishonestly appropriated property belonging to the company. On the Attorney-General's appeal the Judicial Committee, allowing the appeal, held that export quotas were capable of being stolen since, although not things in action, they did come within the words "other intangible property" in the definition of "property" in section 5(1) of the Theft Ordinance. Lord Bridge, giving the Opinion of the Board, said at 1342B-C:

"In their Lordships' opinion the definition of "property" in the English Theft Act 1968 and the Hong Kong Theft Ordinance was intended to have the widest ambit. It would be strange indeed if something which is freely bought and sold and which may clearly be the subject of dishonest dealing which deprives the owner of the benefit it confers were not capable of being stolen. Their Lordships have no hesitation in concluding that export quotas in Hong Kong although not "things in action" are a form of "other intangible property."

We take two points of importance from this passage. The first is that the definition of property in s. 4 of the Theft Act is to be interpreted as having the widest ambit. The second is that the indicia of what constitutes property for these purposes were treated as being that the thing was something (1) which is freely bought and sold and (2) which may clearly be the subject of dishonest dealing which deprives the owner of the benefit it confers.

Gold pieces may clearly be the subject of dishonest dealing which deprives the game player of the benefit they confer. They are freely bought and sold, both within the rules of the game for other game items, and outside the rules of the game for real money or money's worth. Mr Eissa sought to distinguish the case on the basis that gold pieces were not "freely" bought and sold because the buying and selling of gold pieces outside the game was not permitted under the terms of the T&Cs and Rules. However, the fact that transfer is prohibited does not prevent a thing being property. Class A drugs cannot lawfully be bought or sold (with limited exceptions), but as Mr Eissa accepted, illegally held Class A drugs are property within the meaning of the Theft Act and are capable of being stolen. The same is true if the restriction on transfer is contractual, rather than criminal. If A hires out his car to B on terms that it is only for B's personal use, the car remains A's property. If B dishonestly sells the car he is guilty of theft irrespective of the contractual prohibition on sale. It is the intrinsic nature of a car which makes it something which is "freely" bought and sold in practice within the meaning of the first of the two indicia identified

in

Nai-Keung

despite any contractual prohibition on sale. The same is true of gold pieces.

There are three further criminal cases decided by foreign courts which deserve mention.

Taking them in chronological order the first is the 2012 decision of the Dutch Supreme Court in HR, 31 januari 2012, NJ 2012, 536 m.nt. Keijzer (Neth.)

,

upon which the prosecution relied. It was not addressed by the Judge because it had not been brought to his attention and has been relied on for the first time on appeal. In that case the appellant had been convicted of theft of a virtual amulet and mask in the Runescape game contrary to Article 310 of the Dutch Criminal Code which applies to theft of "goed", which may be translated as property. He had, with a co-defendant, physically attacked the 13 year old victim and forced him by means of actual and threatened violence to transfer the virtual items from his own Runescape account to the appellant's account. The Supreme Court held that the virtual mask and amulet were "goed" and dismissed the appeal.

There is limited assistance to be derived from this decision, not only because it was concerned with a different criminal provision in a different language under a different system of law, but also because the Court was influenced by a previous Supreme Court decision in relation to theft of electricity which had held that the characteristics of individual existence were dispositive (see [25] and [47]).

Nevertheless it is of interest that the Court treated it as obvious that the mask and amulet belonged to the victim and were capable of unlawful appropriation (at [44]). It noted that the concept of "belonging to" in Article 310 was not the same as the civil law concept of property but included possession, and that therefore it was irrelevant that Jagex remained the owner of the virtual items (also at [44]). It was irrelevant that the mask and amulet "do not really exist, because they are virtual and immaterial in nature". They had an independent existence and monetary value within and outside the game ([46]). This treatment of the mask and amulet as Runescape in-game items which can be appropriated is consistent with the criteria for "property" in the Theft Act expressed in

### Nai-Keung

as something which is freely bought and sold and which may clearly be the subject of dishonest dealing which deprives the owner or possessor of the benefit it confers. It also provides a real world example of conduct outside the scope of computer hacking or computer manipulation in which the in-game items would be regarded colloquially as property which was stolen in a robbery. If the Respondent is right in this case, the gold pieces could not be the subject matter of an English charge of theft or robbery in similar factual circumstances to the Dutch case, which

we would regard as a surprising and unsatisfactory situation.

The next case is the decision of the New Zealand Supreme Court in

### **R v Dixon**

[2015] NZSC 147. The appellant worked in a bar in which a rugby player then on tour with the England squad for the 2011 World Cup had been captured on the CCTV leaving with a female customer who was not his wife. The appellant obtained the footage by getting a receptionist to compile it from several cameras and save it onto a desktop computer, from which the appellant transferred it to a USB stick. He tried to sell the footage to foreign media outlets, unsuccessfully, and then posted it on a video-sharing site. He was charged with accessing a computer system for a dishonest purpose contrary to s. 249(1) of the Crimes Act 1961, which depended upon the digital CCTV footage being "property" which he had obtained. Property was defined in the Crimes Act as "real and personal property, and any estate or interest in real or personal property, money, electricity, and any debt and any thing in action and any other right or interest." The Court of Appeal had held that the digital files were "pure information" and so were not property. The Supreme Court reversed the decision and held that they were property.

At [25] Arnold J, giving the Supreme Court's reasons, said that the meaning of the word "property" varies with context, citing with approval a passage by Gummow and Hayne JJ in

### **Kenyon v Spry**

[2008] HCA 56 at [89] that the term "property" is not a term of art with one specific and precise meaning, and that it is always necessary to pay close attention to any statutory context in which the term is used. We would agree.

The Court's essential reasoning was summarised at [25]. It was that the files were property because they could be identified, had a value and were capable of being transferred. They also had a physical presence, albeit one which could not be detected by means of the unaided senses, having a "material presence" on any medium on which the digital files were stored (see [39]). Whether classified as tangible or intangible, the files were property for the purposes of s. 249(1) (a).

Despite the ambivalence of the tangible/intangible reference, the Court appears to have treated the files as tangible property; it did not give any other reasons for distinguishing them from "pure information" which in accordance with the "orthodox view" it assumed could not be property. The decision has been the subject of academic criticism, especially in its reasoning in treating digital information as having the qualities of tangible property, in which we see some force (see Low & Llewellyn (2016) 132 LQR 394 and D Harvey [2017] NZCLR 31). The Court's reasoning also relied on the provision being in a statute dealing with computers and concluded that Parliament must have had stored data in mind in relation to the section and those surrounding it (see [35]). For these reasons we have not found the decision to be of any assistance.

Finally there is the recent decision of the Supreme Court of Appeal of Victoria in

### **Yeates (a pseudonym) v The King**

[2025] VSCA 288 delivered on 26 November 2025 after we heard the appeal. The defendant was charged with theft of Bitcoin contrary to s. 72 Crimes Act 1958, which is in identical terms to s. 1(1) of the Theft Act 1968. The definition of property in s. 71 of the Crimes Act is identical to the definition in section 4 of the Theft Act. The Court held that Bitcoin is property. Its essential reasoning was as follows. First, Bitcoin is not "mere information" which in accordance with the orthodox view established in

### **Oxford v Moss**

could not be intangible property for the purposes of the Theft Act. The 'mere information' principle applied to something which was no more than knowledge, but Bitcoin is unlike mere knowledge in that it is rivalrous and exists independently of the code representing it. Secondly it fulfils the first, second and fourth elements of the

### **Ainsworth**

test, the third not being part of Australian Law. It is therefore intangible property, and there are no public policy reasons why cryptocurrencies should not be treated in law as property. It was not necessary to decide whether Bitcoin also constituted a chose in action.

There are of course a number of differences between Bitcoin and gold pieces in Runescape which mean that the reasoning in this case cannot simply be read across to the current issue.

Nevertheless we have found the analysis in this case helpful both in its treatment of the pure information principle, on which we have drawn in what we have said above; and in its emphasis on the need to distinguish Bitcoin as an asset from the code which represents it. We have not, however, adopted the same approach of assuming that for the purposes of the Theft Act the relevant principles are those applicable to private civil law property rights.

Lastly, in the criminal context, we should mention that there are a number of sui generis exceptions to what constitutes property, which have been carved out for social and/or historical reasons. These include the specific exceptions in section 4 of the Theft Act; and, at common law, corpses or body parts not preserved for medical use (see

R v Kelly

[1999] QB 621

). Those sui generis exceptions have no bearing on the issue in this case.

Cases and materials in the civil law

The Ainsworth criteria

Lord Wilberforce's four criteria in

### Ainsworth

are often taken as the starting point for determination of whether something constitutes property for the purposes of private law rights. For convenience we set them out again: "Before a right or an interest can be admitted into the category of property, or of a right affecting property, it must be definable, identifiable by third parties, capable in its nature of assumption by third parties, and have some degree of permanence or stability."

We agree with the Judge that gold pieces fulfil each of these criteria. They are clearly definable and identifiable by third parties. They are capable of assumption by third parties in that they are transferable within the game. Mr Eissa argued that they are incapable of being

legally

assigned because they are subject to the revocable licence issued by Jagex. However unless and until the licence is revoked, the player is free to transfer them within the rules of the game. They also have the necessary degree of permanence and stability. Mr Eissa argued that that this last criterion is not met because they can be withdrawn or destroyed at any time by Jagex or removed from a player's account. However that does not prevent them having

some

degree of permanence and stability. It is apparent that only a small degree of permanence or stability is required: a melting ice lolly or burning match will qualify as property. The Bank of England may withdraw notes or coins as legal tender at any time, but that does not prevent them being property.

### Rivalrousness

Mr Eissa argued that fulfilment of the

### Ainsworth

criteria was not sufficient, and that in order for digital assets to be property they must be rivalrous; and that gold pieces are not.

The concept of rivalrousness has come to the fore in consideration of whether digital assets are property in the light of the emphasis placed on the concept by the LC Reports.

The LC Report and LC Supplementary Report were preceded by a report of November 2019 by the UK Jurisdiction Taskforce of the The Lawtech Delivery Panel under the chairmanship of Sir Geoffrey Vos, Chancellor, as he then was ('the UK Taskforce report'). The UK Taskforce Report recommended that cryptoassets should be treated as property for the purposes of private law rights. It made clear that it was only addressing the issue in that context, not in a criminal or regulatory context, and that what amounts to 'property' may receive a different answer in different contexts (see [11] and [35]-[38]). So too the LC Reports were concerned only with private

law rights in digital assets (see LC Report [1.4] and Chapter 9).

The LC Report recognised that there was a very wide variety of digital assets which might potentially be regarded as property. They included digital files, digital records, email accounts, domain names, in-game digital assets, digital carbon credits, crypto tokens and Non Fungible Tokens, with differing forms of digital technology and characteristics ([1.3]). The LC proposed that digital assets which are neither tangible assets nor choses in action should be recognised as a third form of 'property' to which personal property rights attached if they satisfy three criteria ([4.5]):

- (1) they are composed of data represented in an electronic medium, including in the form of computer code, electronic, digital or analogue signals;
- (2) they exist independently of persons and exist independently of the legal system; and
- (3) they are rivalrous, that is if the use or consumption of the thing by one person, or a specific group of persons, necessarily prejudices the use or consumption of that thing by one or more other persons.

Rivalrousness was a concept applied by the Court in

### **Tulip Trading**

at [71] as applicable to cryptocurrencies on distributed ledgers, endorsing their treatment as property in a number of first instance decisions, in particular

AA v Persons unknown

[2019] EWHC 3556

[2020] 4 WLR 35

. Although

### **Tulip Trading**

and all the first instance decisions were interim applications in which the relevant question was whether there was a sufficiently arguable case that the cryptocurrencies were property in English civil law, Birss LJ's statement at [71] that a cryptocurrency such as Bitcoin is property because it is rivalrous and capable of assumption by a third party was expressed in unqualified terms.

The gold pieces with which we are concerned fulfil the Law Commission criteria. They are not pure information within the

## Oxford v Moss

principle. They have properties which exist outside the minds of individuals, notwithstanding that those properties exist as a consequence of the coded software inside computers. They are rivalrous because the use and consumption of them by the game player necessarily prejudices the use and consumption of them by others. If they are used and consumed in the game by player A they cease to exist and cannot be used by anyone else. If they are transferred to player B they are not available to anyone other than player B. The use of usernames and passwords is designed to ensure the exclusivity of this use and consumption.

Mr Eissa objects that Jagex have both the practical ability and contractual right to alter the holding by player A or player B of their gold pieces, either by action taken directly against the player or by changing the rules of the game. Jagex control the game code and so can rewrite the code to destroy the player's holding. However that possibility does not stop the gold pieces being rivalrous at a time before it occurs. It is the use or consumption of the property which must be rivalrous, not the mere possession of it. The mere fact that whilst a thing is unused and unconsumed it may be removed from someone does not affect whether the quality of the thing is rivalrous before that time. A coin or banknote is property notwithstanding the ability of the Bank of England to recall it as legal tender. If A hires their car to B under a contract terminable at will, the car remains rivalrous in the hands of B for so long as the hire contract continues: the use of it by B precludes the use of it by others. The fact that B's possession may be brought to an end by A at any time does not prevent the car having the characteristic of rivalrousness. The same is true if the right is one to consume or destroy the property rather than remove it. If A lends B a candle on terms that B is free to light and burn it but that A retains the right to light and burn it at any time to the extent B has not done so, the candle remains a rivalrous piece of property in B's hands: the burning of it by B or A precludes (pro tanto) the burning of it by anyone else. In truth this argument is addressed not so much to whether gold pieces are rivalrous, but whether they have some degree of permanence or stability so as to meet the fourth

Ainsworth

criterion, which they do for the reasons we have explained.

We differ from the Judge in his reasoning for reaching the contrary conclusion on rivalrousness. The two reasons which the Judge gave in [25] of his ruling do not, with respect, bear analysis. The first was that "one gold piece is like any other, and their supply is infinite". This does not, however, distinguish them from many other forms of rivalrous property. One paper clip from a given manufacturer is like any other; and the manufacture and supply of them infinite, in the sense that is not capped at any finite number. Yet each paper clip constitutes property. The same is equally true of gold pieces. Mr Eissa submitted that digital assets needed to have a quality of "uniqueness" in order to qualify as property, but it is difficult to understand why this should be so. As he accepted, such a requirement does not apply to tangible property, which may be identical to other items of tangible property, as the paper clip example illustrates. In each case, whether paper clip or gold piece, the control which one person exercises precludes its use or consumption

by another notwithstanding that that person, or another, may acquire further identical property with no finite limit. The Judge's second reason was that "[t]he fact that existing players have wealth does not preclude new players from joining the game and getting more wealth without taking it from existing players". However this too is no answer to the rivalrousness of the in-game wealth which a particular player already has at any given time. It focuses only on different assets which may thereafter be acquired.

The Law Commission considered whether in-game assets would satisfy its criteria at [7.43] to [7.58]. Its provisional conclusion was that they would not, the main obstacle being that their existence relies solely on a proprietary ecosystem owned by game developers or affiliated parties, access to which is governed by licences which usually restrict what a player is able to do in relation to their account. This makes the existence of in-game assets dependent on the legal system.

A number of consultees disagreed and considered that in-game assets were or should be capable of being property. Some of these responses were addressed in the section of the LC Report at [4.76] to [4.83]. At [4.82] the Commission recognised arguments that in-game assets could be rivalrous and exist independently of a legal system notwithstanding that they arose from legal agreements or relationships. At [4.83] the Commission said that its conclusions did not preclude such an argument and that it was important that the law could be technologically responsive to such assets and could interrogate their individual idiosyncratic features. It therefore expressed no firm conclusions on whether in-game assets as a class could be characterised as property for the purposes of private property rights. We too recognise that in-game assets may take many different forms and that in the criminal context their idiosyncratic features must be examined on a case by case basis. We are concerned only with the specific features of gold pieces in the Runescape game.

The LC Reports resulted in the recently enacted Property (Digital Assets) Act 2025 which by section 1 provides:

"A thing (including a thing that is digital or electronic in nature) is not prevented from being the object of personal property rights merely because it is neither—

- (a) a thing in possession, nor
- (b) a thing in action."

Paragraph 6 of the Explanatory Notes to the Bill, drafted by the Law Commission, reflects para [1.3] of the LC Report in making clear that "a thing which is digital or electronic in nature" it was intended to cover a wide variety of different digital including in-game wealth. Paragraphs 21 to 24, again reflecting the LC Reports, confirm that the Act is not intended to confirm the status of any particular thing as giving rise to personal property rights, which is to be left to the courts to determine and develop as part of the common law governing private property rights. In the LC Supplementary Report published with the draft Bill the Commission emphasised at [3.34] that whilst the proposed legislation did not contain criteria for determining what fell within the third

category of property, any potential third category thing would need to be an appropriate object of property rights in the first place and some digital assets are not. It referred back to the more detailed discussion in the LC Report and went on to say "some digital assets, such as most digital files and in-game purchases are very unlikely to satisfy the existing requirements for proprietary legal treatment." This was not meant to be a substitute for the more nuanced treatment in the LC Report itself; nor was it purporting to apply to property in the context of the criminal law.

## Policy arguments

Each side resorted to arguments of policy to support their case. The prosecution suggested that failure to treat gold pieces as property would undermine the UK's status as a global hub for cryptoasset technology. We see no force in this suggestion. Of greater weight is the argument that there would be a general public expectation that the criminal law would penalise the stealing of items of commercial and monetary value, whether or not held in digital form. We have already observed that on the facts of the Dutch Supreme Court case it would be surprising and unsatisfactory if the perpetrator could not be prosecuted for robbery. Mr Eissa submitted that it was no part of his case to argue that the Respondent's conduct, if proved, was not criminal; he was only submitting that it did not engage the Theft Act because the gold pieces were not property. However, he did not identify any other offence which would criminalise the alleged conduct. Although Ms Gaunt was not prepared to pin her colours to the mast by asserting that there could be no prosecution other than by reference to the Theft Act (for perhaps understandable reasons of caution), we are not currently aware of any other provision of the criminal law which could adequately be invoked. Section 1 of the Computer Misuse Act 1990 would cover the unauthorised access to the accounts from which the gold pieces were taken, but not reflect the gravamen of offending comprising the taking of the gold pieces and conversion of them into fiat currency. If there is a lacuna in the statutory law of theft it is not for the court to fill it; but it is a legitimate approach to the construction of s. 4 of the Theft Act to say, slightly paraphrasing Lord Bridge in

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, that it would be strange indeed if something which is regularly bought and sold for real money or money's worth, and which clearly may be the subject of dishonest dealing which deprives the owner or possessor of the benefit which it confers, were not capable of being stolen.

Mr Eissa further argued that if the gold pieces were property, Jagex ought to have complied with a number of statutory regulatory regimes, including in particular Financial Conduct Authority ('FCA') regulation of activities and anti-money laundering provisions. We do not consider that this advances the argument. Whether something is property for the purposes of the Theft Act will not determine its treatment in the different regulatory environment; and if it be the case that the activities of Jagex ought to be regulated by the FCA, that is a matter for the FCA.

## Conclusions

It is time to draw the threads together. Whether a digital asset constitutes property for the purposes of the Theft Act does not depend upon the four civil law requirements identified in

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, or a test of rivalrousness, as such. Those criteria are aimed at determining whether such assets can constitute property for the purposes of private law rights. They may be helpful indicia in the criminal context but they are not determinative. Section 4 uses words of the widest ambit in "other intangible property", whose width is reinforced by s. 5, and they should not be constrained to any greater extent than principle or policy requires. They are apt to catch any thing which can as a matter of normal use of language be described as capable of being stolen, unless there are good reasons why such a thing should be excepted. Such exceptions include the pure information principle, as we have explained it; (quite possibly) the different treatment of intellectual property; and exceptions in respect of particular sui generis assets in certain circumstances, such as those excepted in s4 of the Act and corpses and body parts, for social and historical reasons.

Gold pieces in Runescape fulfil these criteria. They are properly described as something which can be stolen as a matter of normal use of language. They do not fall within any of the established exceptions. They are not "pure knowledge": functionally they exist as identifiable assets distinct from the code which gives rise to them and outside the minds of people. There is no good policy reason for excepting them from the category of property which can be stolen. On the contrary, they are assets which have an ascertainable monetary value and which may be traded for that value both in the game and outside the game. Within the rules of the game they represent money's worth as the product of purchase of a bond. Outside the game they are regularly traded for money's worth. They are capable of being subject to dishonest dealing which deprives their possessor of their use and value. It would be surprising and unsatisfactory if such dishonest dealing did not amount to the offence of theft.

Moreover, they fulfil each of the

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criteria and the Law Commission definition of rivalrousness, although we emphasise again that we are not saying that fulfilment of all those private law criteria is necessary in this criminal context.

Accordingly we grant leave to appeal to the extent that these reasons go beyond the grounds for which the Judge gave leave, and allow the appeal. The answer to the question which the Judge treated as the preliminary issue of law (see [18] above), is that gold pieces within the Old School Runescape game are property which can be the subject of the offence of theft.

## APPENDIX

## Contractual and Licencing Terms

### The End User Licence Agreement

The End User Licence Agreement provides that the player agrees to the terms of the licence by loading or otherwise using the software and that it constitutes a legal agreement. It provides that Jagex remains owner of the software at all times and by clause 1.1:

"Subject to you complying with this Licence, Jagex hereby grant to you a non-exclusive, non-transferable, limited, revocable licence to: (a) download, install and use the Software on one or more computers owned by you or under your legitimate control; and (b) use the Software for your non-commercial, personal purposes only."

Amongst further detailed clauses are a widely worded disclaimer of warranties; and widely worded exclusions and limitations of liability.

### The Terms and Conditions

The Terms and Conditions include the following (we have added paragraph numbers to the parts of the clauses quoted for ease of reference in the body of the judgment).

#### 2. Definitions

"Jagex Product(s)"

is used as shorthand for our online games including all Jagex websites used to play those games and products published by Jagex on behalf of third parties. THE ONGOING SUPPLY OF ANY PARTICULAR JAGEX PRODUCT IS NOT GUARANTEED. SOME JAGEX PRODUCTS HAVE AGE RESTRICTIONS.

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"Virtual Currencies"

is used to describe the in-game currencies that can be purchased in certain Jagex Products. More information about Virtual Currencies can be found in section 14 of these terms and conditions.

3. ...Please read these terms and conditions carefully. It is a condition of your use of a Jagex Product (whether or not you are a Subscriber) that you accept these terms and conditions in full. If you don't agree with any part, please do not use the Jagex Product.

#### 7. Your account and license

To use many features of Jagex Products, we require you to create an account and, in relation to some Jagex Products, download client software. We grant valid account holders a non-exclusive, non-transferable, personal, limited license, which can be revoked at any time, to use Jagex Products, to download and use our client software and to connect to our servers solely to use Jagex Products for non-commercial purposes in accordance with these terms and conditions. THE JAGEX PRODUCTS AND ANY ASSOCIATED SOFTWARE ARE LICENSED, NOT SOLD. YOUR

LICENSE CONFERS NO TITLE OR OWNERSHIP TO THE JAGEX PRODUCTS OR SOFTWARE.

8. Intellectual property rights and ownership

(1).....Materials (including without limit all information, software, data, text, photographs, graphics, sound and video) placed on any Jagex Product by us, or on our behalf, are protected by our (or our business partners/suppliers/advertisers or licensors) copyright and other intellectual property rights. You may not use these materials or any Jagex Product except in accordance with these terms and conditions and for personal (i.e. non-commercial) use only.

(2)All intellectual property or other rights in any game character, account, content, virtual currency and virtual items in the Jagex Products are and will remain the property of Jagex and/or its licensors. You are only granted limited permission (which can be revoked at anytime) to use such content or Jagex Product, subject to and in accordance with these terms and conditions.

(3)NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, YOU ACKNOWLEDGE AND AGREE THAT YOU SHALL HAVE NO OWNERSHIP, TITLE OR OTHER PROPERTY INTEREST IN ANY JAGEX PRODUCT OR ACCOUNT, AND YOU FURTHER ACKNOWLEDGE AND AGREE THAT ALL RIGHTS IN AND TO AN ACCOUNT ARE AND SHALL FOREVER BE OWNED BY AND INURE TO THE BENEFIT OF JAGEX.

(4) Jagex does not recognise any purported: (a) transfers of virtual items or virtual currency which take place outside the rules of a Jagex Product; (b) transfers of accounts; or (c) sale, gift or trade in the real world of anything that appears or originates in a Jagex Product.

(5) Jagex reserves the right to stop offering a Jagex Product or a particular part of a Jagex Product at any time either permanently or temporarily, at which point any license granted to you to use the Jagex Product or a part thereof will be automatically terminated or suspended. In such event, Jagex shall not be required to provide refunds, benefits or other compensation to users in connection with such discontinued elements of the Jagex Product unless required by law.

9. Rules

You must comply with the current version of any rules, guidelines, codes of conduct or instructions specified in any Jagex Product including our game rules, the current version of which is linked to here. The applicable game rules are expressly incorporated into these terms and conditions. Any use of a Jagex Product not in accordance with the game rules exceeds the scope of the license granted by these terms and conditions and is prohibited.

12. Jagex Stopping your account

(1)If, acting reasonably, we consider that:

1. our terms and conditions or any Jagex Product rules - have or may have been breached;
2. there has been fraudulent, unlawful or abusive activity; or

3. it is necessary in order to prevent or stop any harm or damage to us, to any Jagex Product, to other players or the general public
- (2) We may at any time: (i) Stop (as defined above) any or all accounts for Jagex Products; (ii) restrict access to any content-uploading or other feature of our service; and/or (iii) restrict access to or delete virtual currency or anything acquired by means of virtual currency. These actions may result in loss of real money paid in prohibited transactions, such as account trading. If we take any of the above action, you may have a right of appeal.
- (3) WE DO NOT GUARANTEE THE ONGOING SUPPLY OF ANY JAGEX PRODUCT. UPON REASONABLE NOTICE TO YOU, JAGEX MAY DEACTIVATE ANY ACCOUNT AND YOU ACKNOWLEDGE AND AGREE THAT YOU ARE NOT ENTITLED TO ANY REFUND FOR ANY AMOUNTS PAID IN CONNECTION WITH THE ACCOUNT.
14. Virtual Currencies, micro-game credits and virtual items
- (1) In certain Jagex Products, we offer for sale (or in our sole discretion, as free promotions): (i) Virtual Currencies, and (ii) credits that can be redeemed to play micro-games (

#### "Micro-Game Credits"

). Virtual Currencies and Micro-Game Credits can be redeemed (i.e. used) to acquire certain digital goods/services, which we describe below as

#### "Items"

. If you obtain Virtual Currency or Micro-Game Credits from Jagex, you must check that they have been correctly credited to your account and tell us immediately if not.

- (2) PLEASE TAKE NOTE that Virtual Currencies and Micro-Game Credits are subject to very important restrictions:
- (3) Virtual Currency and Micro-Game Credits may expire if they have not been redeemed within a certain period after acquisition, so you should redeem these as soon as possible. The expiry period is whatever we specify when you acquire the Virtual Currency or Micro-Game Credits or, if we haven't specified a time limit, twelve months from acquisition.
- (4) Unless we say otherwise on our website, Virtual Currency and Micro-Game Credits can only be redeemed within the world of the game where you acquired them. Each Jagex Product may contain one or more Virtual Currencies or Micro-Game Credits and unless otherwise stated, each Virtual Currency or Micro-Game Credit is independent and is not exchangeable for any other Virtual Currency or Micro-Game Credit in the same Jagex Product.

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- (5) WE MAY AT ANY TIME IN OUR SOLE DISCRETION CHANGE OR REMOVE ANY ITEM WHICH CAN BE ACQUIRED USING VIRTUAL CURRENCY OR MICRO-GAME CREDITS, AS WELL AS CHANGE THE AMOUNT OF VIRTUAL CURRENCY OR MICRO-GAME CREDITS NEEDED TO ACQUIRE A PARTICULAR ITEM. You may only redeem Virtual Currency or Micro-Game Credits for Items on offer at the time of redemption.
- (6) Virtual Currency and Micro-Game Credits do not have any inherent value and are not your own private property. When you purchase or receive Virtual Currency or Micro-Game Credits, you do not own the Virtual Currency or Micro-Game Credits. Instead they constitute a measurement of the extent of your license in a Jagex Product. Similarly, any Virtual Currency or Micro-Game Credits balance shown in your account does not constitute a real world balance or reflect any stored monetary value.
- (7) We do not provide any cash or refunds for Virtual Currency, Micro-Game Credits or Items (except as required by law) and Virtual Currency, Micro-Game Credits and Items do not have any real world monetary value. Virtual Currency or Micro-Game Credits are for your personal use only. You must not sell or transfer them or make them available to anyone else or attempt to do so, or encourage anyone else to do any of these things. Virtual Currency, Micro-Game Credits and Items can never be redeemed for real world money, goods or any other item of monetary value, and cannot be inherited. We may impose additional restrictions concerning the acquisition or redemption of Virtual Currency, Micro-Game Credits and Items. For example, we may cap the amount of Virtual Currency or Micro-Game Credits which can be acquired, held or redeemed in any particular period or we may impose restrictions based on your country of residence. CERTAIN ITEMS MAY ALSO ONLY BE AVAILABLE TO SUBSCRIBERS.
- (8) FOR THE AVOIDANCE OF DOUBT, VIRTUAL CURRENCY AND MICRO-GAME CREDITS HAVE NO CASH VALUE, DO NOT ACCRUE INTEREST AND, UNLESS OTHERWISE REQUIRED BY LAW, ARE NOT REDEEMABLE OR REFUNDABLE FOR ANY SUM OF MONEY OR MONETARY VALUE FROM JAGEX AT ANY TIME.
- (9) Jagex reserves the right to restrict access to, delete, reduce or liquidate Virtual Currency or Micro-Game Credits: (1) if you have misused the Virtual Currency or Micro-Game Credits or breached any of these terms and conditions; (2) if the Virtual Currency or Micro-Game Credits were awarded in error; (3) if a payment for Virtual Currency or Micro-Game Credits is charged back or otherwise cancelled or reversed; or (4) if you have used Virtual Currency or Micro-Game Credits to conduct any fraudulent or illegal activity.
- (10) Jagex reserves the right to restrict access to or delete Items: (1) if you have misused the Items or breached any of these terms and conditions; (2) if the Items were purchased using Virtual Currency or Micro-Game Credits awarded in error; or (3) if a payment for Virtual Currency or Micro-Game Credits used to purchase the Items is charged back or otherwise cancelled or reversed. In addition, Items that have been acquired by the redemption of Virtual Currency or Micro-Game Credits may expire after a period of time, which by default

shall be twelve months from acquisition. In addition, Items may have particular restrictions, or be consumed or extinguished in the course of your use of a Jagex Product.

- (11) WE MAY AT ANY TIME DECIDE TO END IN PART OR ITS ENTIRETY THE VIRTUAL CURRENCY OR MICRO-GAME CREDITS PROGRAM FOR ALL OR ANY OF OUR JAGEX PRODUCTS. BEFORE WE DELETE THE UNUSED VIRTUAL CURRENCY OR MICRO-GAME CREDITS, WE WILL ENDEAVOUR TO CONTACT YOU TO GIVE AT LEAST FOUR WEEKS TO REDEEM THEM.

## Runescape Bonds

- (12) Within the Jagex Product Runescape, users can purchase a Runescape Bond from Jagex. If you obtain a Runescape Bond from Jagex, you must check that it has been correctly credited to your account and tell us immediately if not.

Runescape Bonds can be redeemed (i.e. used) to acquire Runescape subscription, Virtual Currency, Micro-Game Credits and/or special promotional items that Jagex may decide to offer from time to time in its sole discretion - we describe these collectively as "

## Redemption Items

", Alternatively, Runescape Bonds can be traded in-game with other users in return for in-game items. More information about Runescape Bonds can be found [here](#).

- (13) PLEASE TAKE NOTE that Runescape Bonds are subject to very important restrictions:
- (14) Runescape Bonds can only be traded and redeemed within Runescape.

WE MAY AT ANY TIME CHANGE OR REMOVE ANY REDEMPTION ITEMS WHICH CAN BE PURCHASED USING A RUNESCAPE BOND, AS WELL AS CHANGE THE AMOUNT OF THE RUNESCAPE BOND NEEDED TO ACQUIRE A PARTICULAR REDEMPTION ITEM. You may only redeem the Runescape Bond for Redemption Items on offer at the time of redemption.

- (15) Runescape Bonds: (i) do not constitute a real world balance or reflect stored monetary value; (ii) cannot be redeemed for real world money and cannot be inherited; and (iii) are not your own private property. A Runescape Bond is a measurement of the extent of your license in a Jagex Product.
- (16) WE DO NOT PROVIDE ANY CASH OR REFUNDS FOR RUNESCAPE BONDS (EXCEPT AS REQUIRED BY LAW). WE MAY IMPOSE ADDITIONAL RESTRICTIONS CONCERNING THE ACQUISITION OR REDEMPTION OF RUNESCAPE BONDS. FOR EXAMPLE WE MAY CAP THE AMOUNT OF RUNESCAPE BONDS WHICH CAN BE ACQUIRED, HELD OR REDEEMED IN ANY PARTICULAR PERIOD OR WE MAY IMPOSE RESTRICTIONS BASED ON YOUR COUNTRY OF RESIDENCE.

- (17) Jagex reserves the right to restrict access to, delete, reduce or liquidate Runescape Bonds: (1) if you have misused the Runescape Bond or breached any of these terms and conditions; (2) if the Runescape Bond was awarded in error; (3) if a payment for a Runescape Bond is charged back or otherwise cancelled or reversed; or (4) if you have used Runescape Bonds to conduct any fraudulent or illegal activity.
- (18) Jagex reserves the right to restrict access to or delete Redemption Items: (1) if you have misused the Redemption Items or breached any of these terms and conditions; (2) if the Redemption Items were purchased using Runescape Bonds awarded in error; or (3) if a payment for Runescape Bonds used to purchase Redemption Items is charged back or otherwise cancelled or reversed. In addition, Redemption Items that have been acquired by the redemption of Runescape Bonds may expire after a period of time, which by default shall be twelve months from acquisition.

Redemption Items may have particular restrictions, or be consumed or extinguished in the course of your use of Jagex Products.

- (19) WE MAY AT ANY TIME DECIDE TO END PART OF OR THE ENTIRETY OF THE RUNESCAPE BOND PROGRAM. BEFORE WE DELETE THE UNUSED RUNESCAPE BOND, WE WILL ENDEAVOUR TO CONTACT YOU TO GIVE YOU AT LEAST FOUR WEEKS TO REDEEM IT.
- (20) IF YOUR ACCOUNT FOR A JAGEX PRODUCT REMAINS DORMANT (I. E. IS NOT USED) FOR MORE THAN 12 MONTHS, AND THERE IS UNREDEEMED VIRTUAL CURRENCY, MICRO-GAME CREDITS OR RUNESCAPE BONDS ASSOCIATED WITH YOUR ACCOUNT, WE MAY CHOOSE TO CREDIT YOUR ACCOUNT WITH ITEMS OF EQUIVALENT VALUE FOR THIS EXPIRED VIRTUAL CURRENCY, MICRO-GAME CREDITS OR RUNESCAPE BONDS. WE WILL ENDEAVOUR TO CONTACT YOU BY EMAIL PRIOR TO SUCH ACTION BEING TAKEN.

#### 15. Refund policy

- (1) We are happy to review requests for refunds on a case by case basis. However, refunds are not always possible to give for many reasons.

Unless required by law, we will not refund any amounts paid in relation to subscriptions, Micro-Game Credits, Runescape Bonds or Virtual Currency when:

You have been the victim of in-game scamming, as there are many warnings about avoiding this on the Jagex Products (however, we will try to assist you to recover your account).

You have been banned from a Jagex Product for violating these terms and conditions, any rules of a Jagex Product or the user content policy.

Jagex stops offering the Jagex Product or you decide to cancel your subscription or account.

#### 17. Functioning of Jagex Products

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We cannot guarantee the ongoing supply of any particular Jagex Product.

19. OUR AND YOUR LEGAL RESPONSIBILITY

- (1) JAGEX PRODUCTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. WE DO NOT WARRANT THAT YOU WILL BE ABLE TO ACCESS OR USE A JAGEX PRODUCT AT THE TIMES OR LOCATIONS OF YOUR CHOOSING OR THAT A JAGEX PRODUCT WILL BE UNINTERRUPTED OR FREE OF ERRORS. ACCORDINGLY, JAGEX IS NOT LIABLE TO YOU FOR ANY LOSS OR DAMAGE THAT MIGHT ARISE, FOR EXAMPLE, FROM THE INOPERABILITY, UNAVAILABILITY OR SECURITY VULNERABILITIES OF THE JAGEX PRODUCT OR FROM YOUR RELIANCE ON THE QUALITY, ACCURACY, OR RELIABILITY OF THE JAGEX PRODUCT.
- (2) JAGEX EXPRESSLY DISCLAIMS LIABILITY FOR ANY LOSS OR DAMAGE CAUSED BY US OR OUR EMPLOYEES OR AGENTS IN CIRCUMSTANCES WHERE (A) THERE IS NO BREACH OF A LEGAL DUTY OF CARE OWED TO YOU BY US OR BY ANY OF OUR EMPLOYEES OR AGENTS; (B) SUCH LOSS OR DAMAGE IS NOT A REASONABLY FORESEEABLE RESULT OF ANY SUCH BREACH; OR (C) SUCH LOSS OR DAMAGE RELATES TO A BUSINESS. BY USING A JAGEX PRODUCT OR SERVICES OFFERED BY JAGEX, YOU AGREE TO WAIVE ANY LEGAL DUTY OF CARE OWED TO YOU BY JAGEX, TO THE MAXIMUM EXTENT ALLOWED BY LAW.
- (3) THE MAXIMUM LIABILITY OF JAGEX TO YOU FOR LOSSES OR DAMAGES THAT YOU SUFFER IN CONNECTION WITH A JAGEX PRODUCT OR THESE TERMS SHALL NOT EXCEED THE AMOUNT THAT YOU PAID TO JAGEX DURING THE SIX (6) MONTHS PRIOR TO THE TIME THE CAUSE OF ACTION AROSE. NOTWITHSTANDING THE FOREGOING, NOTHING IN THESE TERMS AND CONDITIONS SHALL EXCLUDE OR LIMIT JAGEX'S LIABILITY FOR ANY LOSS OR DAMAGE, TO THE EXTENT THAT SUCH LIABILITY CANNOT UNDER ANY APPLICABLE LAW BE EXCLUDED OR LIMITED.
- (4) YOU WILL BE LIABLE FOR ANY LOSS OR DAMAGE WE SUFFER ARISING FROM YOUR BREACH OF THIS AGREEMENT OR MISUSE OF A JAGEX PRODUCT.
- (5) NOTHING IN THESE TERMS AND CONDITIONS AFFECTS YOUR STATUTORY RIGHTS AS A CONSUMER.

20. General

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Headings above are for guidance only and not binding.

The Rules of Runescape

The Rules of Runescape include the following

Real World Trading

Game items must only be exchanged for other items/services within the game.

## Real World Trading explained

Real-world trading is the term used for activities which occur outside of the game environment which result in the real-world sale or purchase of items, GP or services with the intention of supplying or advancing a Jagex in-game character other than by the means that are incorporated into the game.

This includes, but is not limited to: purchasing gold or items for Runescape on 3rd party websites, buying a Runescape account on 3rd party websites, paying someone to increase your account's experience (XP) and paying someone to complete quests and activities on your behalf.

## Why we have this rule

Nobody has our permission to sell Runescape accounts or any Runescape related virtual in-game item. All Runescape accounts and virtual items are the property of Jagex Ltd and players are only granted a limited, revocable permission to use accounts and virtual items.

The activities of people obtaining items with the intent of selling them, often involves cheating practices such as using macro scripts (botting).

When a player purchases an existing Runescape account, there is a high probability that the account may have been stolen. Stolen accounts will always be returned to the original owner.

For another player to use your game character they will require access to your account. This means your security becomes compromised and the account as well as the virtual items on the account, are then likely to be sold on to a third party.

When items in Runescape are not supplied by Jagex Ltd., the items are often taken from stolen accounts.

Any attempt to real world trade is a serious breach of a player's agreement with Jagex. Jagex does not recognise any attempted transfer of accounts or virtual items outside of the game environment.

Note 1 David Fox, “Digital Assets as Transactional Power” (2022) 1 Journal of International Banking and Financial Law 3. See also The Law of Personal Property (3rd ed 2021) para 8-0501. “The owner of a [crypto-token] is not so much given exclusive control over the information per se as the value of the ideational asset that the information records.”

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