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COMPLEXITIES OF DIGITAL ASSET AND ITS DIVISION

AUTHORED BY - MR. R A KATTA

ABSTRACT

This article aims to identify the complex web of issues related to the distribution of digital assets during family arrangement, disputes divorce and in the wake of death of a member. In a rapidly evolving environment, the introduction of digital assets has created complex challenges, especially in the area of separation and inheritance. It examines the financial, emotional and legal issues one deals with matters of separation and inheritance. The discussion encompasses jurisdiction-specific regulations, valuation, dilemmas, access disputes, and the critical roles of digital estate planning in ensuring a smooth transition of assets. The need for clear communication, comprehensive planning, and legal adaptability can create an environment to deal with modern issues.

When we look at the physical assets, they can be easily divided during partition or passed on to the legal representatives at the time of death. What about the volatile digital assets? For instance, cryptocurrencies are highly volatile and not stable creating difficulty in determining their true value. With growing digitalization, wealth is created over the internet. What will happen when there's a question about the division of wealth at the time of separation? How can the digital assets be passed on to the legal hire or representative at the time of death? This research paper aims to identify the solution for division of the digital assets.

Keywords: Digital Assets, Crypto, Cryptocurrencies, Wealth, Digital Wealth, Division, Family Arrangement, Divorce, Awareness, Solutions.

INTRODUCTION

Post-pandemic the usag of digital media has increased at an unexpected rate. The world is moving towards the era of digitalization. The era dominated by technology has widened the concept of wealth, which is now more than tangible assets. Wealth is created over the internet through digital assets. The question comes into the picture what are 'Digital Assets'? The term is not well defined

legally, which gives room for a broad interpretation. From cryptocurrencies and online accounts to intellectual property, has not only evolved the concept of assets but also brought challenges concerning division at times of divorce, demise or any other conflict.

DEFINING DIGITAL ASSET

Digital Assets are anything and everything that is stored in the digital form which can be put in to create value.¹ Digital Assets include cryptocurrencies, e-commerce websites, social media accounts, photos, videos, subscription accounts, NFTs, digital gold, digital documents, logos, streaming media accounts and much more. With the introduction of blockchain, there are digital assets such as security tokens, crypto assets, metadata, non-fungible tokens, and more. Digital assets are acquiring importance in today's world as they are becoming an integral part of one's profession and personal life.²

An asset is a resource in the economy, which holds the potential to create value.³ The most important factor to determine the digital asset to be an asset, it must possess the potential to create value. The digital assets can be purchased, gifted, or transferred to someone else bringing the value. The digital asset must be traceable and stored.

EXTENT OF DIGITAL ASSETS

Digital assets are much more than photos, videos, logos, and e-wallet money. It has gained popularity due to its easy access and convenience. The revolution in the digital market began with the introduction of blockchain and cryptocurrency in 2009.⁴ Cryptocurrency became a well-accepted digital asset as people started investing in it with an expectation of return values. With the increasing number of internet users, the usage of digital resources has increased. Nowadays we prefer surfing digital resources to find relevant information rather than the library as it saves cost, and time and is convenient.⁵ The digital assets are easily traceable with the help of blockchain and distributed ledger technology (DLT).⁶ The other examples of digital assets may

¹ Gartner Glossary, <https://www.gartner.com/en/finance/glossary/digital-assets> (last visited Dec. 4, 2023 10:57 AM).

² Investopedia, <https://www.investopedia.com/terms/d/digital-asset-framework.asp> (last visited Dec. 4, 2023, 11:07 AM).

³ Financial statements, <https://www.investopedia.com/terms/> (last visited Dec. 4, 2023, 11:14 AM).

⁴ Id.

⁵ Dam News, <https://digitalassetmanagementnews.org/features/re-defining-the-meaning-and-scope-of-digital-assets-part-1/> (last visited Dec. 4, 2023, 12:37 PM).

⁶ Deloitte, <https://www2.deloitte.com/us/en/pages/center-for-board-effectiveness/articles/from-next-generation-to-now-digital-assets/> (last visited Dec. 5, 2023, 1:23 PM).

include, Photos and videos, Documents, Emails and email accounts, NFTs, Purchased Media accounts like subscriptions, Gaming Accounts and Illustrations, Social media accounts like YouTube, Instagram, Facebook, twitter, and much more.⁷

IS ONLINE MEDIA CONSIDERED AS AN ASSET?

The traditional definition of assets is defined as any resource which holds the potential to generate revenue.⁸ The assets which add no value to the business or person is not considered as an asset. Similarly, the digital resources in which we have the potential to create value or hold some sort of value are considered Digital Assets. For instance, a YouTube channel has one million subscribers, bringing in brand collaborations, and generating revenue. This YouTube channel shall be treated as an asset. Assets have two categories tangible and intangible. Tangible assets are those which are physical (like machinery, inventory, and more), whereas intangible assets are those which cannot be seen but felt (like trademarks, and goodwill).⁹ When we look at digital resources adding or generating value or carrying any value, we can consider them as a new category of 'digital assets.

Digital assets can be categorized into the following categories:¹⁰

1. **Cryptocurrencies:** A form of digital currency, which is a rising alternative payment method, created using the algorithm.¹¹ To name few Bitcoins, Ethereum, and Dogecoin are among the popular coins.
2. **Digital SM Accounts:** Social Media accounts (like Twitter, YouTube, Facebook, and Instagram), cloud storage, Gmail accounts, and many more carry financial as well as sentimental values.
3. **Intellectual Assets:** Digital Creations like e-books, social media posts, artwork, music, and more fall under the category of Intellectual properties. Their division and ownership questions are increasing and creating complexities.

⁷ Id at 2.

⁸ Forge, <https://www.theforge.com/blog/skills/asset>, (last visited Dec 5, 2023, 1:25 PM).

⁹ The Balance, <https://www.thebalancemoney.com/tangible-vs-intangible-assets>, (last visited Dec.5 2023, 4:12 PM).

¹⁰ The Motley Fool, <https://www.fool.com/terms/d/digital-assets/>, (last visited Dec. 6 2023, 10:20AM)

¹¹ Oswego State University off New York, <https://www.oswego.edu/cts/basics-about-cryptocurrency/>, (Dec. 6 2023, 10:24AM).

4. **Virtual Possessions:** These are the possessions which do not carry any material value, but are created during interaction with a digital platform.¹² It includes subscription accounts (like Netflix, family cloud storage, search history, music playlists, SMS, video games, and more.

THE DIVISION OF DIGITAL ASSETS

About five decades ago, situations were different, life was slow and not had to be worried about many things. But post-2020 has created a way faster than anyone could have imagined. There are things like breaches of data and privacy, empty bank accounts overnight and much more. When the wealth is being created virtually, the concern regarding division of the digital assets.

Generally, during divorce, various factors like contributions of the spouse, and circumstances are considered in the division of the assets. In a court-litigated divorce, in most cases, the assets are evenly divided, whereas in a mediated divorce, the assets are divided as per the mutual agreement.¹³ The assets carry financial as well as sentimental values, thereby requiring careful consideration. For instance, family photo albums on smartphones or clouds, carry irreplaceable sentimental value.

In the case, **Ruscoe v. Cryptopia** the New Zealand High Court recognised digital assets as property which possesses the capability of entrusting.¹⁴ The defendant was a cryptocurrency exchange platform that enabled its users to trade cryptocurrency and levied some amount of fees for the same. The website was hacked in 2019 and caused a heavy loss of NZ\$30 million to account holders.¹⁵ The question of digital assets being property was raised. The plaintiff argued that it must be seen as ‘intangible personal property.’¹⁶ The court held it as “property” as it fulfilled the following three categories: -

- Traceable Subject matter
- Identifiable by the third party
- Some degree of stability

¹² Carnegie Mellon University, <https://www.hcii.cmu.edu/project/virtual-possessions>, (Dec. 7 2023, 2:45PM).

¹³ Collaborative Practice California, <https://www.familydivorcesolutions.com/digital-assets-how-are-they-divided-in-divorce/>, (Dec. 8 2023, 12:33 PM).

¹⁴ Ruscoe v. Cryptopia, NZHC 728, 2020.

¹⁵ Norton, Rose Fulbright, <https://www.nortonrosefulbright.com/en/knowledge/publications/d6ea37bd/cryptocurrencies-are-property-capable-of-being-held-on-trust-new-zealand-high-court-holds>, (Last visited. Dec. 10, 2023).

¹⁶ Id.

- Cable of assumption by the third party

CHALLENGES IN THE DIVISION OF DIGITAL ASSETS

There is an increasing dispute over the access and ownership of digital assets during divorce and separation. The following are the challenges arising at the time of the division of digital assets:-

1. **Identification and Volatile:** Digital assets are of various types like social media accounts, cryptocurrency, intellectual property and much more. Identifying and valuing them can be challenging due to their volatile nature.
2. **Jurisdictional Issue:** Digital assets exist beyond the borders of a country, which may pose challenges in determining the applicability of law.
3. **Security and Privacy Concerns:** Digital assets usually require credentials for access. Transfer of credentials with compromise of security can be challenging. Ensuring privacy and compliance with data protection laws during the division process is essential.
4. **Cryptocurrency Challenges:** Managing and securing the private keys is essential, as a loss of the private keys can lead to a loss of the assets. It also has tax implications which need to be considered during the division.
5. **Digital Rights and Licensing:** The assets which are copyrighted or software which may involve complex licensing agreements need to be considered during division. For instance, an Instagram page having 5 million followers, is handled jointly by the husband and wife. It is challenging to determine the ultimate ownership during the separation of the couple.

POINTS TO CONSIDER DURING DIVISION OF DIGITAL ASSETS

With the rising digitalization, it is crucial to carefully examine the digital assets and be pre-planned for the division. The division shall be mutually agreed upon by the parties. Following are a few strategies to deal with the challenges mentioned above: -

1. **Create Digital Will:** When pre-planning the division makes things look less complicated. Suppose one can specify his/her wishes and who shall get which part of digital assets, the division becomes simple. Seek advice from a legal professional for handling the information about division.

2. **Regular Review and Updates:** With the fast-evolving time, one must keep themselves updated regarding the latest digital platform. Ensuring technical literacy of beneficiaries and family members about the digital assets, their value and the division process.
3. **Licensing Documentation:** Keeping a piece of detailed information with regards to the licenses like copyrighted content and applying the usage of digital wallets and secure vaults to keep the documents safe and secured.
4. **Mediation:** A mediator is a trained and impartial professional who resolves disputes outside the court through discussion.¹⁷ Consider a consultation session with a mediator to resolve the dispute arising in the division process.
5. **Seek Professionals:** Engaging with specialists like Lawyers, Tech experts, and estate managers, can provide ideas and guidance for specific circumstances.

CONCLUSION

Our lives are now more inclined to the digital realm. There is a continuous investment in digital assets like cryptocurrencies, digital gold and more. The influencers through YouTube and Instagram are earning through their millions of followers and subscribers. This has created a huge impact on the manner wealth and assets are created. As we navigate evolve adopt digital assets and pass on the legacies a comprehensive framework or guiding principle is much needed. Navigating through the dispute matters regarding the volatile assets requires careful analysis. To successfully navigate the digital revolution, it is essential to have a strong understanding of the digital landscape. To effectively address challenges, you must make a concerted effort to communicate with both legal and technical experts. The framework for the division of digital assets can be formulated through a collaborative initiative of individual professionals, legal systems and financial institutions. As the digital era is approaching, rapidly evolving everything done around us, adapting and addressing the challenges are essential.

¹⁷ Anderson Hunter Law Firm, <https://andersonhunterlaw.com/blog/what-is-a-mediator> (last visited Dec. 12, 2023, 10:45 AM).