



Digital Assets and Estate division: Toward a coherent legal framework

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Abstract

The rapid expansion of digital environments has reshaped the structure of property and posed new challenges for succession law. Unlike traditional assets, digital assets are characterized by a separation between legal ownership and technical control, and their operation frequently depends on platform governance and contractual arrangements. This structural fragmentation complicates the division of estates upon death. This article examines the theoretical foundations of estate division in relation to digital assets and argues that traditional succession doctrines are insufficient to address their layered and technologically mediated nature. Drawing upon property theory and selected comparative developments, the study identifies the structural characteristics of digital asset division, including intermediary involvement, contractual limitations, and the distinction between economic value and access rights. It analyzes two principal models of distribution, access-based and value-based approaches, and proposes a coherent legal framework that integrates economic entitlement with structured access rights.

Keywords: Digital assets, succession law, estate division, ownership and control, legal framework

Introduction

Digital transformation has fundamentally altered the ways in which individuals create, manage, and accumulate wealth. Increasingly, valuable assets exist exclusively in digital form, including online accounts, cryptocurrencies, digital intellectual property, monetized social media platforms, cloud-based data, domain names, and virtual goods. These assets may possess significant economic value while also carrying personal, relational, and informational dimensions. In many cases, a person's digital presence represents not only financial interests but also social identity and personal history. Succession law, however, developed in a legal environment shaped by tangible property and clearly defined proprietary claims. The classical model of estate division assumes that once heirs acquire ownership, they are capable of exercising effective control over the inherited property. Legal entitlement and factual dominion are presumed to coincide. Estate division is therefore conceptualized as the allocation of proprietary shares within a unified patrimony, following the settlement of debts and obligations.

Digital assets challenge this assumption. An heir may be legally recognized as the successor to a digital account yet be unable to access it because authentication credentials are unavailable or platform policies restrict transfer. Conversely, technical access to an account may exist without lawful entitlement. This separation between ownership and control reveals a structural tension within contemporary succession law. The problem is not limited to practical inconvenience; it concerns the very object of estate division.

The central question is therefore not merely whether digital assets can form part of an estate. Rather, it concerns how estate division should be conceptualized when the object of division is technologically mediated, contractually constrained, and often intertwined with personal data. Traditional succession doctrine views division as the allocation of ownership shares in a stable asset. Digital assets, by contrast, consist of layered entitlements that may include economic value, access privileges, contractual

positions, and data-related interests. A coherent legal response must address this structural complexity rather than extending traditional rules by analogy without adaptation.

Property theory and the changing structure of Ownership

The foundations of succession law rest upon the idea of a transferable patrimonial unit. Upon death, the estate passes to heirs as a whole, and division subsequently allocates specific shares. This framework presupposes that property is a coherent object of ownership capable of redistribution without altering its essential structure. Ownership is traditionally understood as conferring the right to possess, use, enjoy, and dispose of an asset, subject to legal limitations.

Modern property theory, however, has long recognized that ownership is not a single, indivisible right. Honoré (2017) characterized ownership as a bundle of rights, encompassing the rights to possess, use, manage, derive income from, and exclude others from property. Merrill and Smith further argue that property law functions to establish legally protected boundaries that are enforceable against third parties. These insights reveal that ownership consists of structured legal entitlements rather than mere physical control.

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Digital assets make this disaggregation particularly visible. First, they expose a separation between legal entitlement and technical control. In traditional property contexts, the

holder of legal title generally possesses the practical means to exercise dominion. Digital assets, however, exist within infrastructures operated by service providers. Access depends on authentication systems, platform rules, and technological architecture. Legal recognition alone does not guarantee the ability to control or manage the asset in practice. The right may exist in law, yet remain ineffective in fact.

Second, digital assets are frequently governed by contractual arrangements that define the scope of user rights. Many platforms characterize user interests as licenses rather than ownership and impose restrictions on transferability. If the deceased possessed only a conditional or non-transferable right, the interest that passes to heirs may also be conditional. This contractual dimension complicates the operation of succession law, which traditionally emphasizes testamentary freedom and the transfer of property upon death. The tension between inheritance law and contract law becomes particularly pronounced when Terms of Service attempt to restrict or prohibit post-mortem transfer.

Third, digital assets often combine economic value with personal data. Email accounts, social media profiles, and cloud storage services may contain communications involving third parties. Estate division therefore implicates not only property law but also privacy and data protection concerns. The object of inheritance is not a purely economic asset but a complex structure of interrelated rights and interests. As a result, digital inheritance operates at the intersection of property law, contract law, and information law.

These developments suggest that digital inheritance cannot be conceptualized simply as the transfer of ownership in the traditional sense. Estate division must account for the layered and technologically mediated character of digital property. If ownership consists of multiple entitlements, then estate division must determine how those entitlements are to be allocated in a manner consistent with fairness, functionality, and regulatory coherence.

Structural characteristics of Digital asset division

The division of digital assets differs from traditional estate distribution in several important respects. First, intermediary involvement is central. Digital assets are typically stored, maintained, and controlled by service providers who manage the technological infrastructure. Even where heirs are legally entitled to inherit a digital asset, effective realization of that entitlement depends on compliance with platform procedures and policies. Service providers may require formal documentation, impose procedural hurdles, or limit the scope of access granted to heirs. Estate division thus involves not only heirs but also intermediary entities that exercise practical control over access. This triadic structure fundamentally alters the classical model of succession, which traditionally focuses on the relationship between the deceased and the heirs.

Second, contractual limitations shape the scope of inheritance. Terms of Service agreements may restrict assignment or provide that accounts are personal and non-transferable. Although succession law recognizes the transfer of property upon death, contractual clauses may limit the extent to which digital interests can be transmitted. In some jurisdictions, courts have addressed disputes between heirs and platform providers concerning access to

accounts of deceased users. These cases illustrate the tension between testamentary intent and contractual governance. The interaction between inheritance principles and contractual arrangements requires careful analysis to determine which rights are transferable and under what conditions.

Third, digital assets frequently involve a distinction between economic value and operational access. A monetized online platform may generate revenue, but its value depends on continuous management and interaction with users. Dividing such an asset requires not only allocating economic benefits but also determining who will exercise managerial authority. Traditional approaches that focus solely on proportional ownership shares may fail to address this functional dimension. Without clear allocation of operational control, the asset's value may deteriorate or disappear.

Fourth, digital assets are often dynamic and volatile. Cryptocurrencies may fluctuate dramatically in value over short periods of time. Online businesses may gain or lose profitability depending on market conditions and user engagement. The timing of estate administration can therefore significantly affect the economic outcome of division. Traditional succession frameworks, which often assume relatively stable asset values, may not adequately account for such volatility.

These structural characteristics demonstrate that digital estate division cannot rely exclusively on classical assumptions about ownership and possession. A more nuanced framework is necessary to address intermediary control, contractual constraints, regulatory overlap, and the functional nature of digital assets.

Models of Estate division for Digital assets

Two principal approaches to dividing digital assets can be identified in legal and practical discourse. The first is an access-based approach. Under this model, priority is given to granting heirs the ability to access and manage digital accounts. This method preserves functionality and is particularly relevant for assets whose value depends on continued operation or that carry personal significance. By ensuring access, heirs may maintain digital businesses, preserve online identities, or manage stored data. However, the access-based approach may conflict with privacy concerns and platform policies. Shared access among multiple heirs can generate disputes, compromise security, and blur lines of responsibility. Moreover, unrestricted access to personal communications may infringe upon the privacy interests of third parties.

The second is a value-based approach. This model treats digital assets primarily as economic resources. The asset may be transferred to one heir for management or liquidation, and the resulting value is distributed proportionally among heirs. This approach aligns more closely with traditional inheritance doctrine and reduces conflicts over joint control. It provides clarity in distribution and facilitates settlement of the estate. Yet valuation may be complex or volatile, particularly in the case of cryptocurrencies or digital businesses. In addition, reducing digital assets to economic value may overlook their personal or relational dimensions. Some digital assets cannot easily be monetized without destroying their intrinsic character or social significance.

Neither approach alone adequately captures the composite nature of digital property. The access-based model prioritizes functionality but may undermine distributive fairness. The value-based model promotes economic equity but may impair operational continuity. The limitations of both models underscore the need for a more integrated framework.

Toward a coherent legal framework

A coherent legal framework for digital estate division should integrate economic entitlement with structured access rights. Rather than treating digital assets as indivisible objects, the framework should recognize them as composites of distinct yet interrelated entitlements. Estate division should therefore focus on allocating specific rights in a manner that preserves both fairness and functionality.

Such a framework may be guided by three principles. First, differentiation according to asset type. Digital assets vary significantly in nature. Personal communication accounts, financial digital assets, intellectual property, and monetized platforms should not be treated identically. Assets primarily consisting of personal data may justify limited and carefully structured access rights, taking into account privacy considerations and the intentions of the deceased. Economically productive assets may require allocation of managerial authority to a designated heir, combined with proportional distribution of economic benefits to others.

Second, proportional allocation of economic benefits combined with designated operational control. Where continued management is essential to preserving value, granting managerial authority to one heir while ensuring economic compensation to others may achieve both efficiency and equity. This approach avoids fragmentation of operational control while respecting distributive fairness.

Third, recognition of regulatory and contractual boundaries. A coherent framework must operate within the constraints imposed by data protection law and platform governance. Rather than assuming absolute transferability, succession law should clarify the extent to which digital rights are inheritable and establish procedures for effective transfer. Legislative clarification may be necessary to define fiduciary authority and balance privacy with inheritance claims.

By reconceptualizing estate division as the allocation of differentiated entitlements rather than the simple partition of ownership, this framework aligns succession law with the structural realities of digital property. It provides conceptual clarity while preserving the foundational objectives of inheritance law, including certainty, fairness, and respect for testamentary intent.

Conclusion

Digital assets expose structural tensions within contemporary succession law. The traditional assumption that legal ownership entails effective control does not hold in platform-mediated environments. Estate division must therefore move beyond mechanical allocation of proprietary shares and address the layered, technologically dependent character of digital property.

A coherent legal framework that integrates economic entitlement with structured access rights offers a balanced response. By recognizing the composite nature of digital assets and the role of intermediary governance, succession law can adapt to digital transformation while preserving its

core principles. In doing so, inheritance law can remain both conceptually sound and practically effective in the digital age.

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