El precedente y cómo leer una sentencia de Singapur

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La doctrina del precedente vinculante opera en sentido vertical. Las resoluciones del Court of Appeal vinculan a la Appellate Division, a la General Division y a los State Courts. Las resoluciones de la Appellate Division vinculan a la General Division y a los State Courts. En una Practice Statement de 1994, el Court of Appeal declaró que dejaría de considerarse vinculado por sus propias resoluciones anteriores o por las del Privy Council. Desde entonces se ha apartado de la doctrina anterior cuando ha considerado que mantenerla causaría una injusticia o limitaría el desarrollo del Derecho.[1] Las resoluciones de tribunales de fuera de Singapur, incluidos los tribunales ingleses cuyo Derecho se recibió, tienen valor persuasivo y nunca vinculante. En la práctica se citan constantemente. La sentencia ByBit sobre la naturaleza de bien del USDT se apoyó en la resolución inglesa AA v Persons Unknown y en la resolución de Hong Kong Re Gatecoin Ltd, ambas analizadas en la Parte J. También consideró los trabajos de la Law Commission de Inglaterra y Gales sobre activos digitales como material para la argumentación.[2]

Un lector suizo debe aprender a distinguir la ratio decidendi, es decir, la proposición jurídica necesaria para resolver sobre los hechos, de los obiter dicta, las observaciones formuladas de paso. Solo la ratio vincula. Una sentencia de la General

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Division de Singapur suele ocupar entre cincuenta y cien apartados, expone los hechos con detalle, recoge las alegaciones de las partes, analiza la jurisprudencia y la doctrina y después aplica la conclusión. La proposición vinculante puede ocupar dos apartados. El instinto del jurista continental de leer una sentencia como una breve exposición razonada de la regla, como se lee el sumario de una BGE, lleva aquí a error, porque el tribunal a menudo decide en términos estrictos y deja abierta a propósito la cuestión más amplia. El tribunal del caso ByBit declaró que el USDT depositado en un monedero concreto era un thing in action susceptible de mantenerse en trust. No declaró que todo token sea un bien en cualquier contexto. Un tribunal posterior que se enfrente a un token de gobernanza o a un NFT partirá del razonamiento y avanzará desde ahí.

Notas

1. Practice Statement (Judicial Precedent) de 11 de julio de 1994, Court of Appeal, publicada en 1994 2 SLR 689. ↩
2. ByBit Fintech Ltd v Ho Kai Xin, 2023 SGHC 199, apdos. 29–36, con cita de AA v Persons Unknown, 2019 EWHC 3556 (Comm), y Re Gatecoin Ltd, 2023 HKCFI 914. ↩

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