

ICOs (aka Token Generating Events)

Professor Anita Anand

J.R. Kimber Chair in Investor Protection and Corporate Governance

University of Toronto

Nov 13, 2018

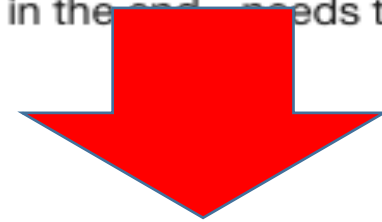
↑ [free_robot](#) 1 point · 7 months ago

↓ I've been told you can't really skirt the law by opening a foreign corporation like this. From what I

The SEC is coming down hard on ICOs...because let's be real, they're definitely securities

↑ still if the people behind the company are canadian it doesnt really make a difference in the end, needs to be registered but is exempt from a prospectus probably

Share Report Save



↑ [quackmeister](#) 1 point · 7 months ago

↓ The SEC is coming down hard on ICOs, and the OSC (or other provincial regulators) are unlikely to hold a charitable view towards the argument that they are not securities.

Because let's be real - they're definitely securities. Anyone who thought otherwise was living in a fantasy land.

This isn't correct...each ICO will need to be assessed Individually looking at underlying business

This isn't correct. If you read the OSC's own statements, they said each ICO will need to be assessed individually based on substance rather than form. If the token's value is primarily derived from the prospective value of an underlying business, then the token is indeed a security. However, if the token is used primarily for some other means, like playing an online video game, then the token is not a security.

DICHOTOMY

- Investor protection vs market efficiency
- “Security” vs Token
- Decentralization vs Centralization
- Sandbox (flexibility) versus Rules (certainty)

Purposes of Act

- (a) to provide protection to investors from unfair, improper or fraudulent practices;
- (b) to foster fair and efficient capital markets and confidence in capital markets; and
- (c) to contribute to the stability of the financial system and the reduction of systemic risk.

Securities law is consumer protection legislation



1946 case leasehold interests in orange groves

***Howey* test for “investment contract”**

- **investment of money**

- includes an investment of goods and services. *Int'l Bhd. of Teamsters v. Daniel*, 439 U.S. 551, 560 n.12 (1979).

- **in a “common enterprise”**

- either horizontal commonality (where the investors' fortunes are interwoven) or vertical commonality (where there is a direct correlation between the success or failure of the promoter's efforts and the success or failure of the investment). *SEC v. Eurobond Exch., Ltd.*, 13 F.3d 1334, 1339 (9th Cir. 1993).

- **with an “expectation of profits”**

- “capital appreciation” and “participation in earnings” are examples, but a fixed rate of return also counts. *SEC v. Edwards*, 540 U.S. 389 (2004).

- **“solely on the efforts of others”**

Four part test – Canada and the US

Can't call something a "token" to avoid securities law!



When do tokens cease to be "securities" if originally classified as such?

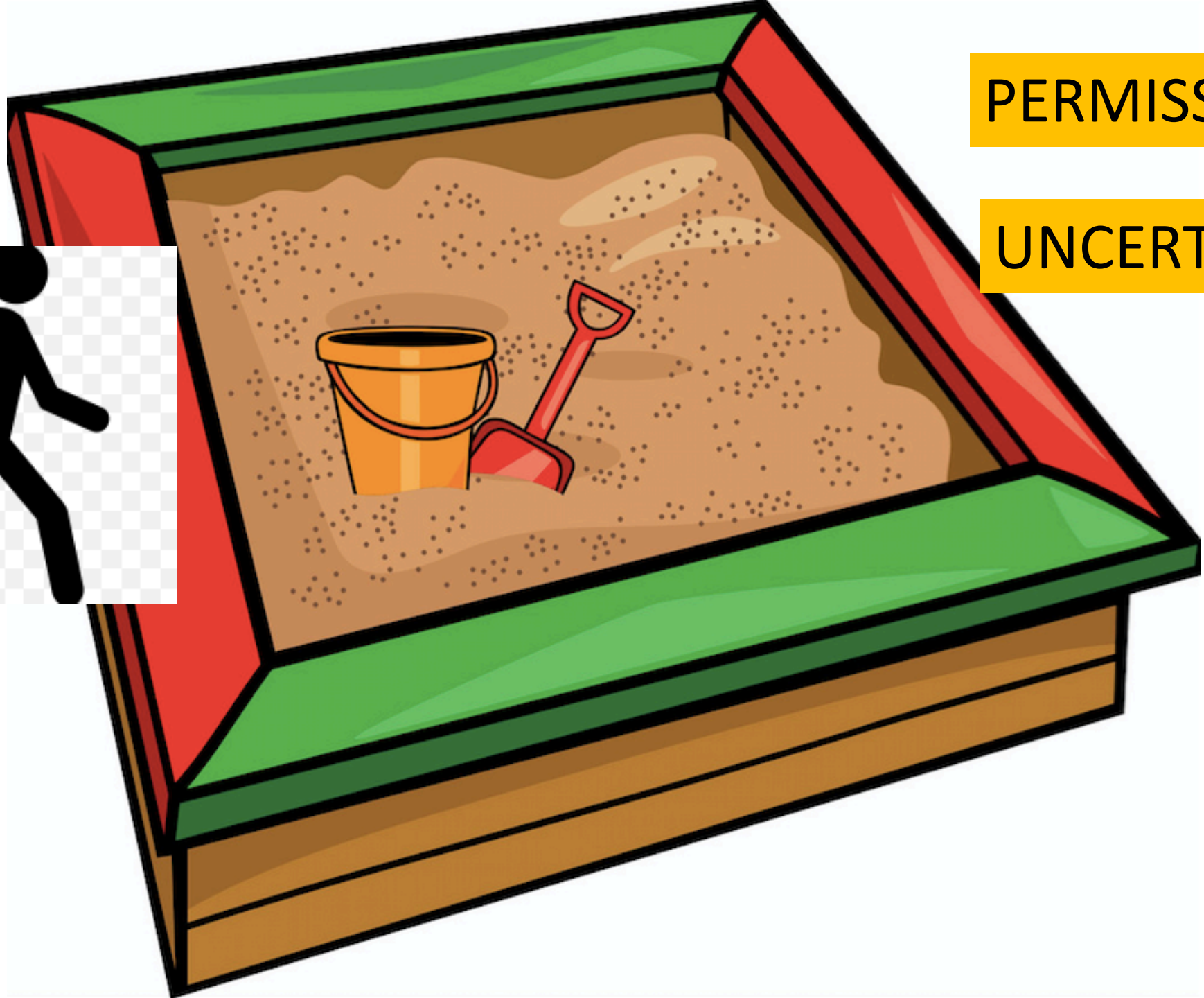


Once a “security”
not always a “security”

But what determines when
the chameleon changes?




KEY FACTOR: DECENTRALIZATION i.e. central party whose efforts are a key determining factor in the enterprise – if not, is the token still a “security”?



PERMISSION?

UNCERTAINTY?



“Replace the dollar, the yen, the euro with Bitcoin. That type of currency is not a security.”

“Where I give you my money and you go off and make a venture [...] and in return for me giving you my money, you say, ‘You know what, I’m going to give you a return.’ That is a security, and we regulate that. We regulate the offering of that security, and we regulate the trading of that security.”

(Jay Clayton, SEC Chair)



OSFI, Bank of Canada, securities regulators –
where do ether and bitcoin fall if not securities?
Who IS protecting investors?

Purposes of Act

- (a) to provide protection to investors from unfair, improper or fraudulent practices;
- (b) to foster fair and efficient capital markets and confidence in capital markets; and
- (c) to contribute to the stability of the financial system and the reduction of systemic risk.

Securities law is consumer protection legislation