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The Howey “scheme” is to structure ownership of the individual rows of orange trees such that they can be owned through a plat map ledger which entitles holders to rights to shares of the market value of emitted orange tokens and/or their pro rata share of orange grove market cap

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Thanks. But it's not me, that's literally what the Howey Court said. People have reading comprehension problems, caused in part by the way that other courts including later SCOTUS rulings apparently ignore the details and use their imaginations as a substitute for plain language.

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The Coinbase motion today turns on whether Howey Court ruled that Howey Trees, the rows that could only be owned via plat map ledger entry and could only be physically accessed with permission from Howey, were themselves securities.

crypto-law.us/wp-content/upl...
twitter.com/jasoncoombsceo...

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My Comment Letter to the SEC (in connection with Rulemaking that may revise the definition of "Exchange" to include smart contracts + blockchains that create ledgers where securities can be recorded or transferred) dives into this question of "Howey Trees" sec.gov/comments/s7-02...

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REVAK v. SEC REALTY CORP.
18 F.3d 81 (1994)

A citrus grove 🍊 sold to investors as real estate, COUPLED WITH A LITERAL CONTRACT promising a share of profit from farming + selling the crop, does NOT constitute a Howey "investment contract" — see what DOES:
law.resource.org/pub/us/case/re...

Section 2(1) of the Securities Act of 1933, 15 U.S.C. Sec. 77b(1), defines a "security" as

any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(Emphasis added.) If the Lake Park offering is to constitute the sale of a "security", it must fall within the definition of an investment contract. The district court found that it does; we disagree.


The Supreme Court long ago defined the term "investment contract" to include any "contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party." SEC v. W.J. Howey, Co., 328 U.S. 293, 298-99, 66 S.Ct. 1100, 1103, 90 L.Ed. 1244 (1946). The investors in Howey bought parcels of land in a citrus grove. The land was offered together with a service contract under which the seller would jointly cultivate the groves and market the produce, and would remit the profits to investors based on the acreage they owned. The Court held that the transaction was an investment contract, emphasizing that the seller was offering "something more than fee simple interests in land, something different from a farm or orchard coupled with management services." Id. at 299, 66 S.Ct. at 1103. The "something more" was the opportunity to join in a "common enterprise"; investors would "contribute money and ... share in the profits of a large citrus fruit enterprise managed and partly owned" by the seller. Id.

The three elements of the Howey test must all be present for a land sale contract to constitute a security: (i) an investment of money (ii) in a common enterprise (iii) with profits to be derived solely from the efforts of others. Cameron v. Outdoor Resorts of America, Inc., 608 F.2d 187, 192 (5th Cir.1979). We hold that the Lake Park venture does not constitute a common enterprise.

A common enterprise within the meaning of Howey can be established by a showing of "horizontal commonality": the tying of each individual investor's fortunes to the fortunes of the other investors by the pooling of assets, usually combined with the pro-rata distribution of profits. See Hart v. Pulte Homes of Michigan Corp., 735 F.2d 1001, 1004 (6th Cir.1984); Salcer v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 682 F.2d 459, 460 (3d Cir.1982) (investment must be "part of a pooled group of funds"); Milnarik v. M-S Commodities, Inc., 457 F.2d 274, 276 (7th Cir.) (success or failure of other contracts must have a "direct impact on the profitability of plaintiffs' contract"), cert. denied, 409 U.S. 887, 93 S.Ct. 113, 34 L.Ed.2d 144 (1972). In a common enterprise marked by horizontal commonality, the fortunes of each investor depend upon the profitability of the enterprise as a whole:

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
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They use slightly different language than expected, so I read REVAK over again carefully.

I see that Coinbase slightly altered "pooled" to read a new limitation that funds from investors must GO INTO A COMMON ENTERPRISE for horizontal commonality to exist. Lake Park was not one.

Horizontal commonality ties the fortunes of each investor in a pool of investors to the success of the overall venture. In fact, a finding of horizontal commonality requires a sharing or pooling of funds.

Hart, 735 F.2d at 1004 (citations omitted).

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(Emphasis added.) If the Lake Park offering is to constitute the sale of a "security", it must fall within the definition of an investment contract. The district court found that it does; we disagree.


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


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SEC should win this motion. They allege common enterprises DO EXIST: crypto tokens issued, traded via Coinbase or held, transferred using Coinbase Wallet ARE schemes: “a pool of investors” with fortunes tied to success of ventures, AND primary token sale DID fund each enterprise.

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

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To find whether SEC allegation of existence of crypto “common enterprises” each with “pool of investors” tied together in “horizontal commonality” with “sharing or pooling of funds” such that profit for owners comes “solely” from efforts of promoter or third-party requires trial.





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It's inconceivable for the trier-of-fact (a judge or jury rendering a trial verdict) to find there is no third-party engaged in primary sales of crypto tokens to fund any essential managerial, skillful efforts required to maintain + promote each crypto common enterprise. #Bitcoin 📈

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

Even in #Bitcoin 📈 we have miners mining blocks, generating the new coinbase transactions that add to coin supply; first sale a primary sale by each miner, looks like a sale by issuer of a unit of economic participation in the issuer's “enterprise” that funds operation + promotion.


   

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Win for Coinbase requires showing that despite closely resembling a “centralized” common enterprise w/Howey “investment contract” security, DECENTRALIZED common enterprises are NOT Howey schemes.

BEST way to show this may be to resurrect historical Howey “led to expect” element.

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Read REVAK carefully: ESSENTIAL INGREDIENTS of an investment contract are NOT a literal “contract” (dissenting opinion by Justice Frankfurter 📖 clarified) but fact investors ARE led to expect economic reality: value of asset, market value of security, comes from EFFORT OF OTHERS

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
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REVAK found Lake Park condominiums NOT a scheme that derived its economic value, market price on resale, from effort of others who operated a common enterprise w/ scheme to pool investors horizontally or allocate profit from mgr to investor vertically, EVEN WITH A SERVICE CONTRACT


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THE DEFINING CHARACTERISTIC of a Howey "Investment Contract" was found to be whether or not essential ingredients of a "common enterprise" scheme invariably led investors to expect their share of an enterprise to produce share of pooled profit: from success overall of the venture

 **JasonCoombs.CEO** ❤️👉💰 @JasonCoombsCEO · 27m

PROBLEM for Coinbase and #Bitcoin and #crypto in general in our litigation with @SECGov is simple:

NOBODY who buys crypto is led to expect profit from efforts of others, but, in every other respect, the SEC can and will show tokens ARE "decentralized common enterprise" "schemes"

 **JasonCoombs.CEO** ❤️👉💰 @JasonCoombsCEO · 9m

If "effort of others" DOES create the market price increase, crypto investors DO reasonably expect this, AND profit therefrom, just as @SECGov views crypto, STILL:

Essential Ingredients of Howey investment contract REQUIRES "led to expect" — an element that crypto DOES NOT GIVE.