

# UNAUTHORISED DISPOSITION OF INTERMEDIATED SECURITIES AND THE INNOCENT ACQUIRER RULE: THEORY AND REALITY. THE CHILEAN CASE

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# SUMMARY

## FIRST PART

Connection among acquisition, unauthorised disposition and innocent acquirer's protection in the Convention

## SECOND PART

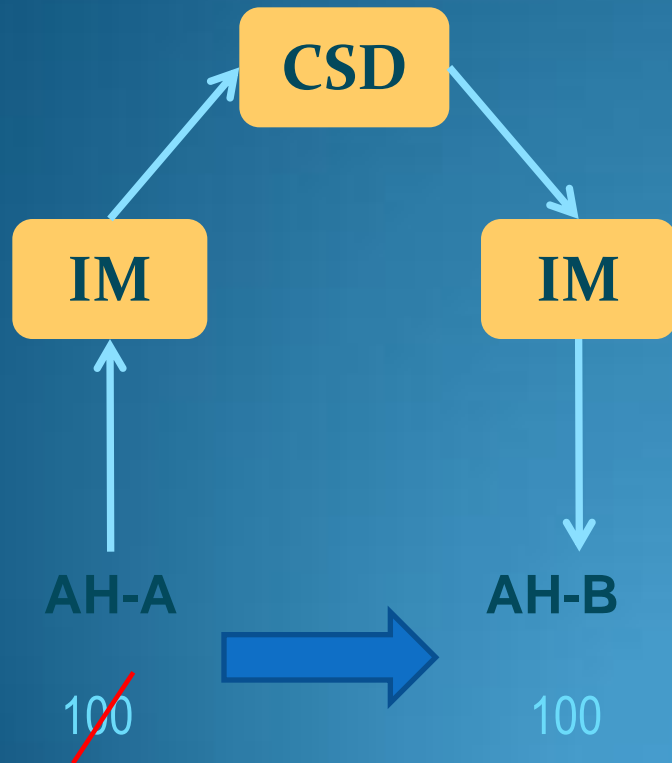
The situation under Chilean Law

# ACQUISITION AND DISPOSITION

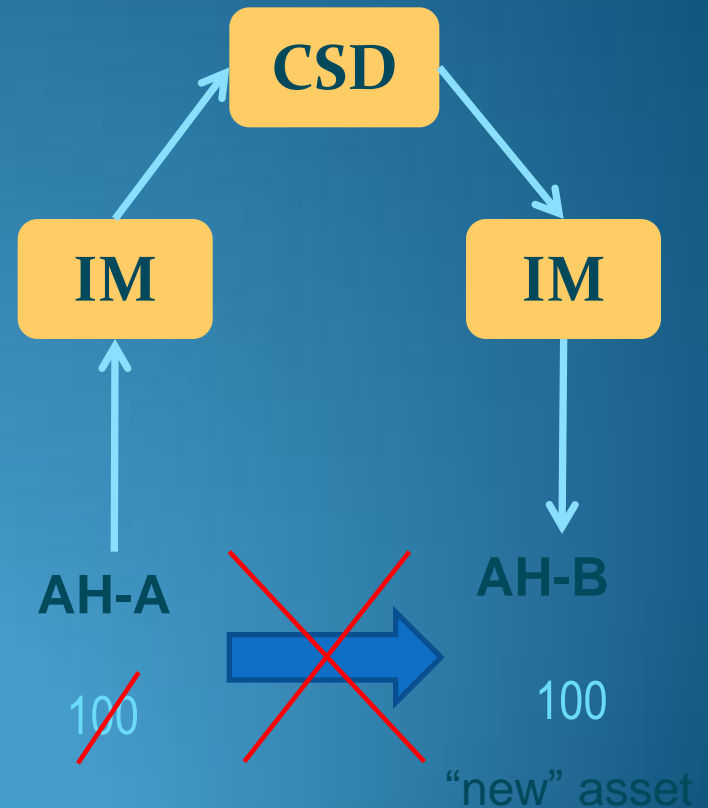
- FIRST RULE: credit is enough to render the acquisition effective against third parties (11.2)
- SECOND RULE: invalidity, reversal and condition is left to NCL (16)
- THIRD RULE: innocent acquirer is protected even if credit/designation entry is invalid/reversible (18)

# FIRST RULE: SEPARATION PRINCIPLE

➤ Single transfer  
(derivative acquisition)



➤ Creation new interest



# SEPARATION PRINCIPLE AND FUNCTIONAL APPROACH

SECOND RULE: invalidity or reversal of credit/debit is left to NCL (16)

Case: State z  
(derivative acquisition system)



# UNAUTHORIZED DISPOSITION

State Z  
(derivative acquisition system)

IM

no authorization

AH-A

~~100~~

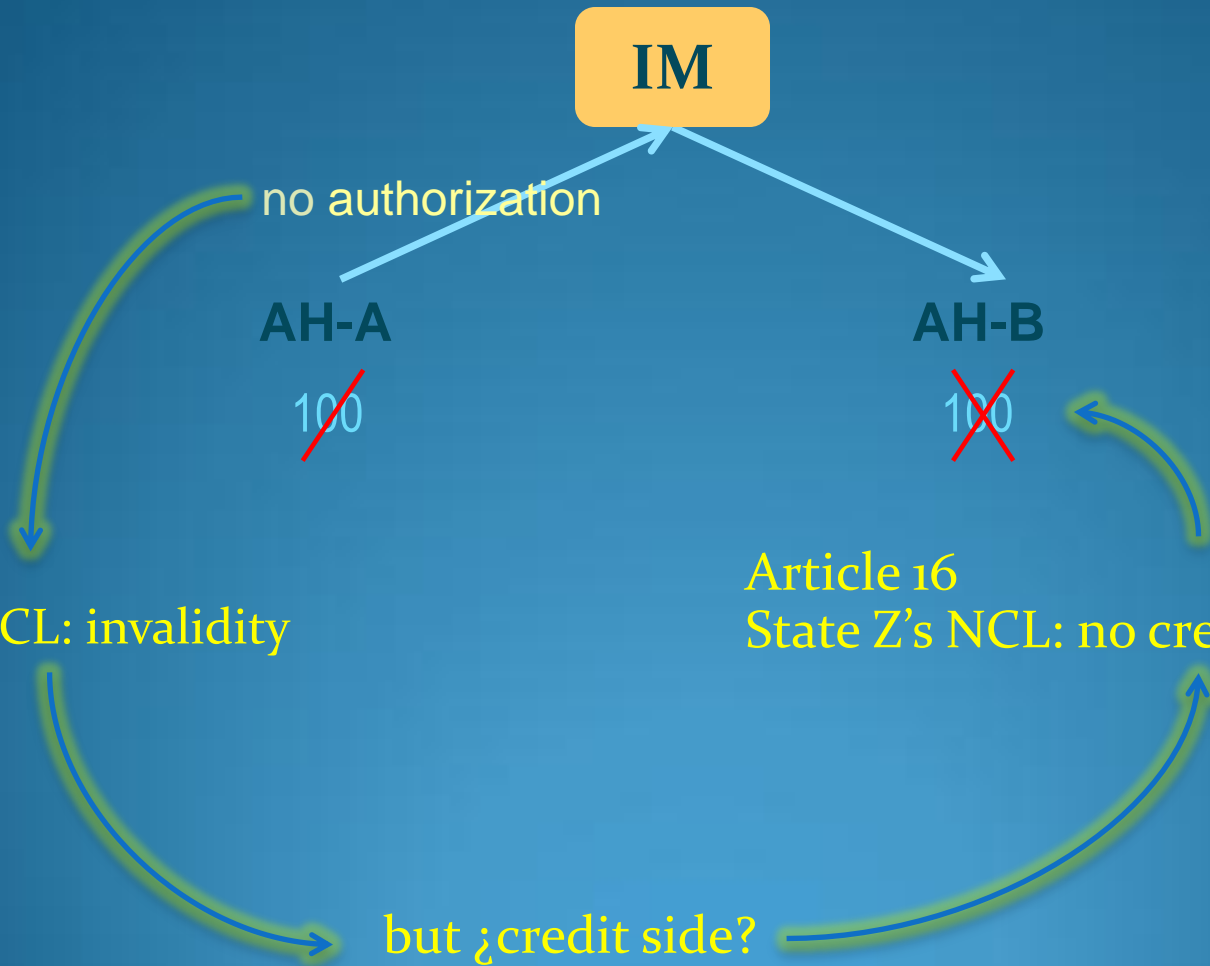
AH-B

~~100~~

Article 15  
State Z's NCL: invalidity

Article 16  
State Z's NCL: no credit without debit

but ¿credit side?





Arts.  
15 and 16

Consequences are left to  
NCL

limit: innocent acquirer  
rule (IAR)

# THIRD RULE: INNOCENT ACQUIRER

State Z  
(derivative acquisition system)

IM

IAR

no authorization

AH-A

~~100~~

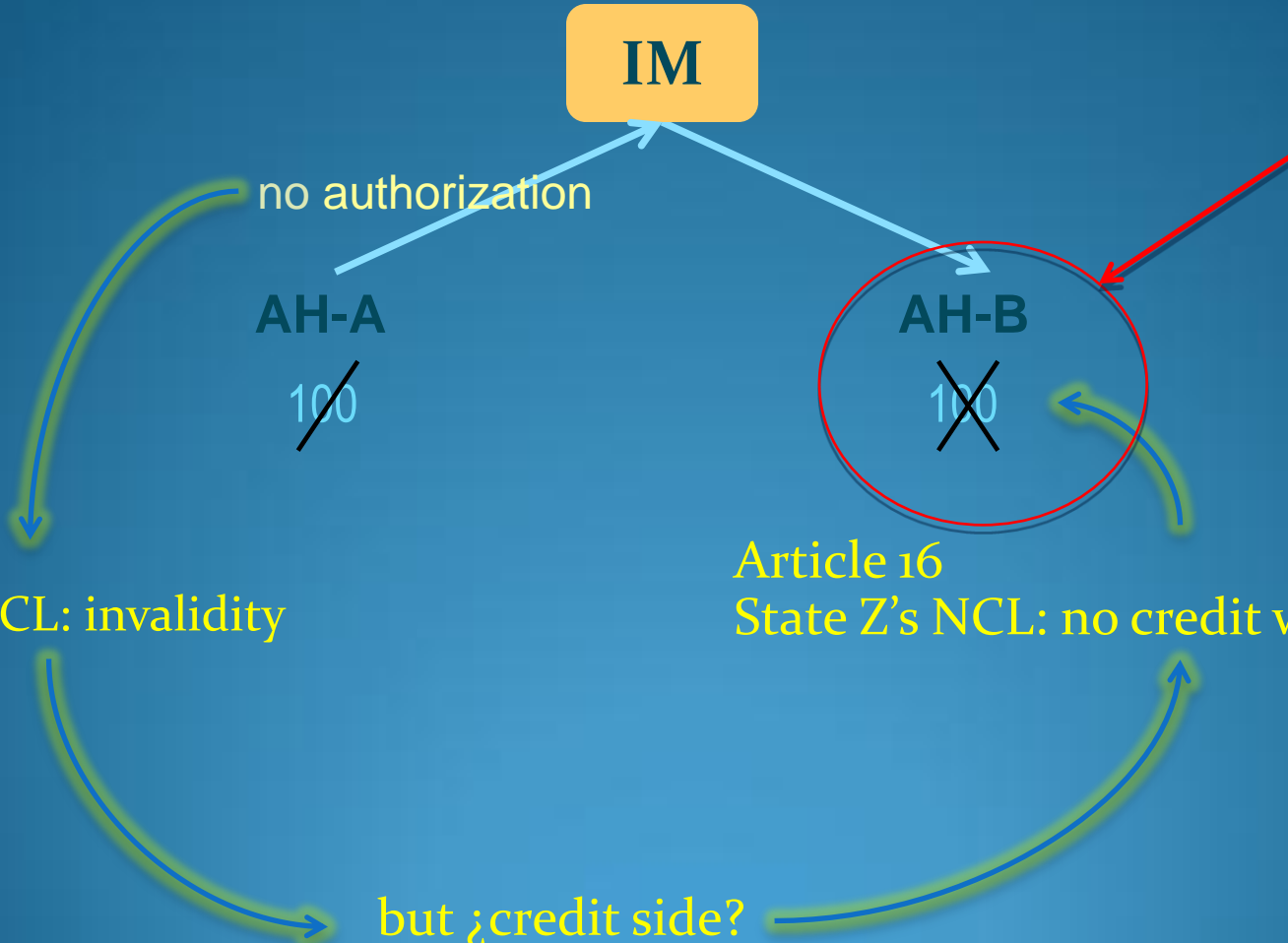
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Article 15  
State Z's NCL: invalidity

Article 16  
State Z's NCL: no credit without debit

but ¿credit side?



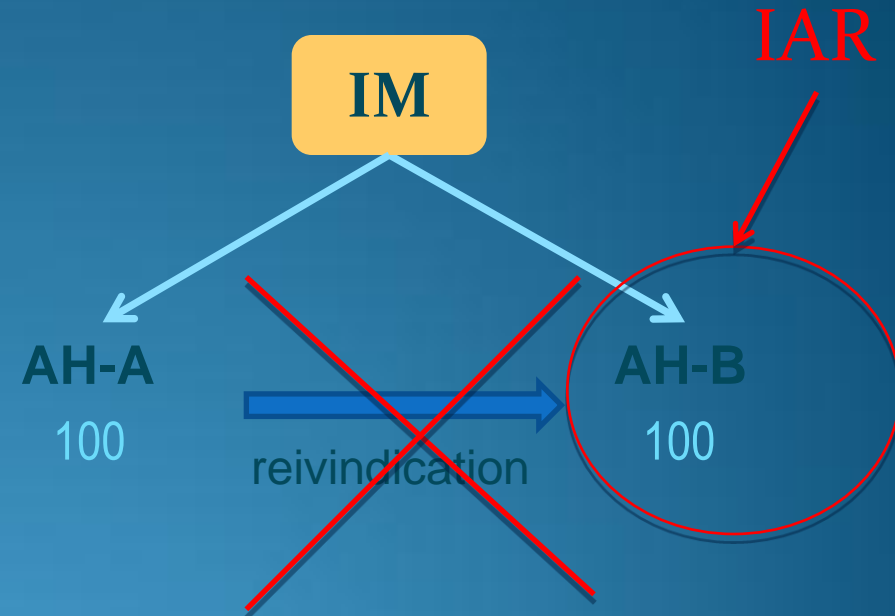


# IAR ESTRUCTURE (I)

State Z  
(derivative acquisition system)

## ➤ Paragraph 1

- protects acquirers, except if “actually know or ought to know, at the relevant moment, that another person has an interest in the securities or intermediated securities and that the credit to the securities account of the acquirer, designation entry or interest granted to the acquirer violates the rights of that other person with respect to its interest”.

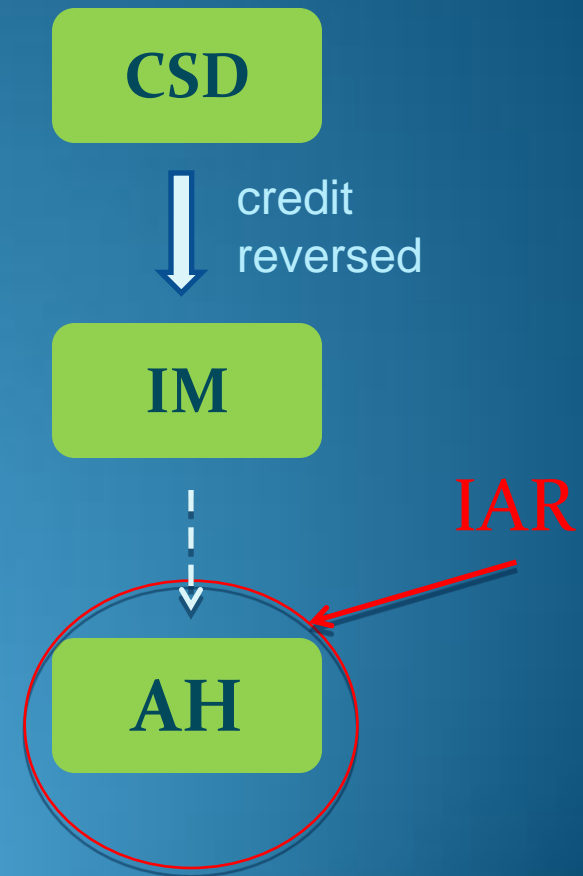


# IAR ESTRUCTURE (II)

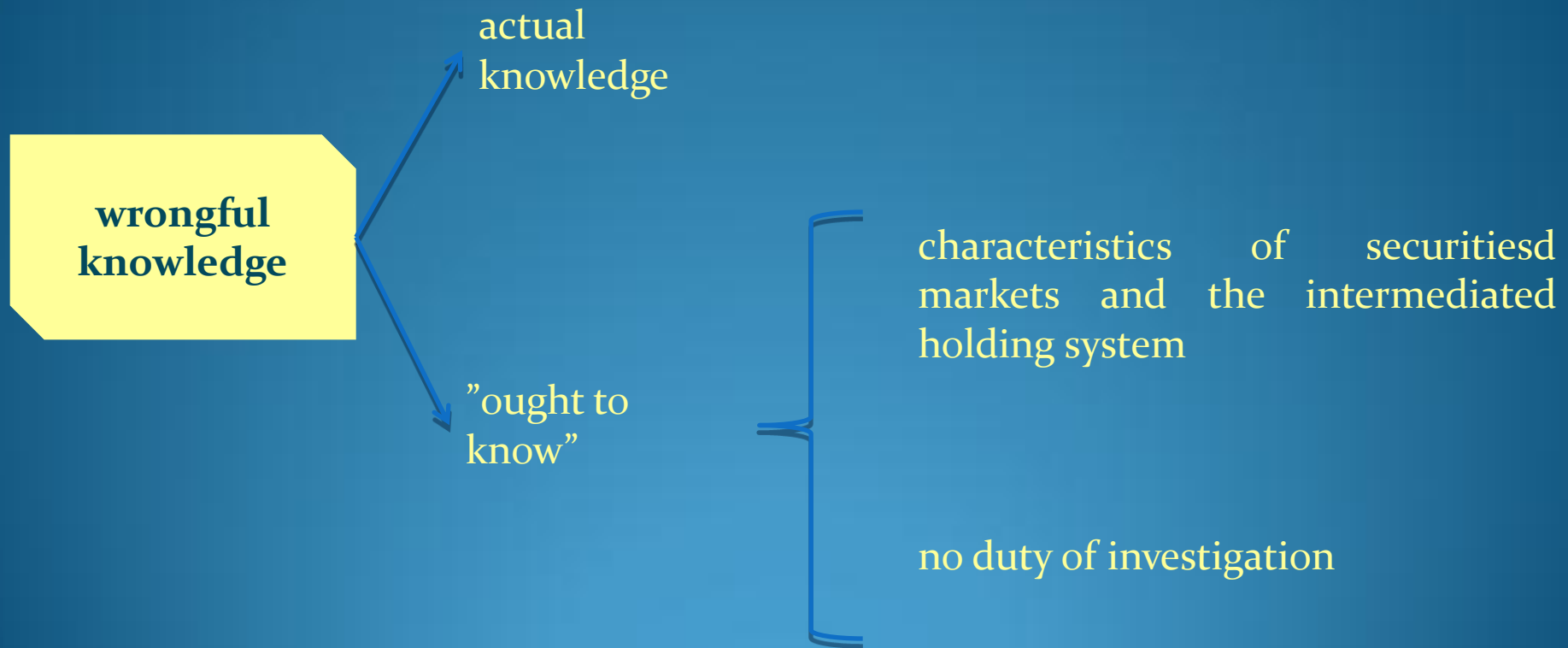
## ➤ Paragraph 2

- protects acquirers ,  
except if “actually know or  
ought to know, at the  
relevant moment, of an  
“*earlier defective entry*”

An “earlier defective entry”  
means a credit or  
designation entry liable to  
be invalid or reversed



# IAR STRUCTURE (III)



# II PART: CHILEAN LAW

## Civil Code

derivative acquisition (*traditio*) + *titulus* and *modus*

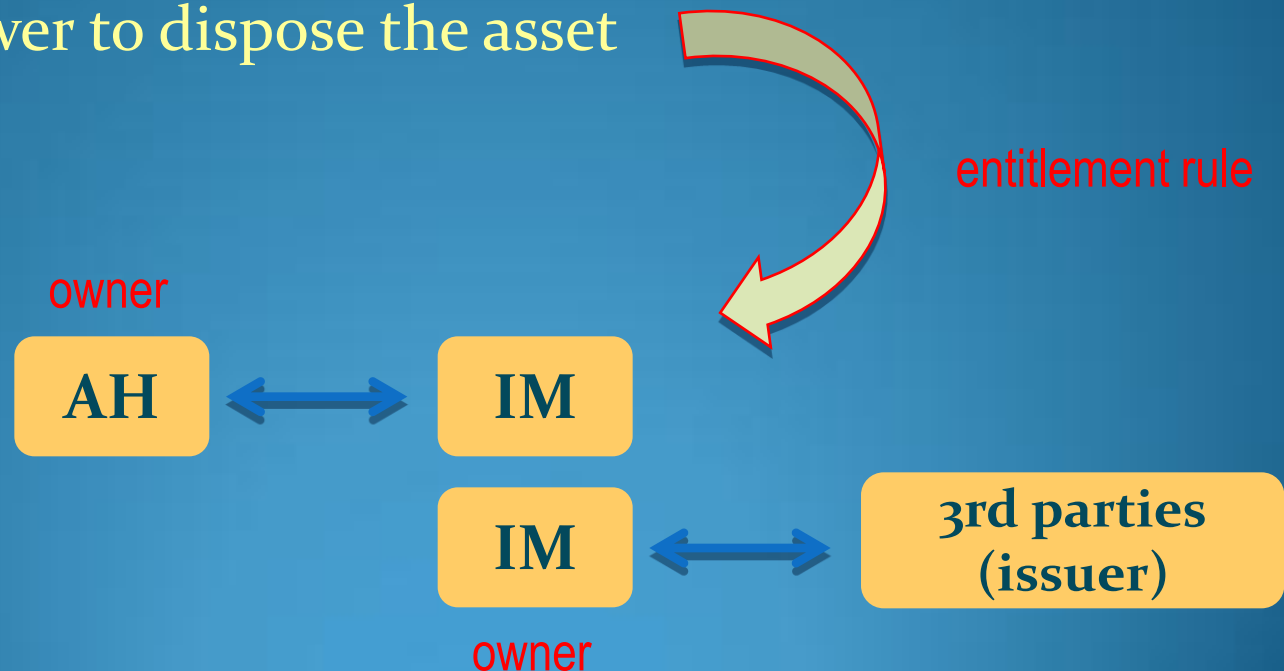
- consent
- legal capacity
- legal power to dispose the asset
- delivery

# II PART: CHILEAN LAW

## Book-entry rules

derivative acquisition (*traditio*) + *titulus* and *modus*

- consent
- legal capacity
- legal power to dispose the asset
- delivery



# II PART: CHILEAN LAW

## UNAUTHORIZED DISPOSITION

IM

no authorization

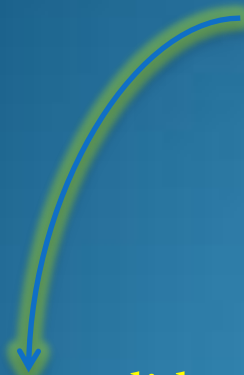
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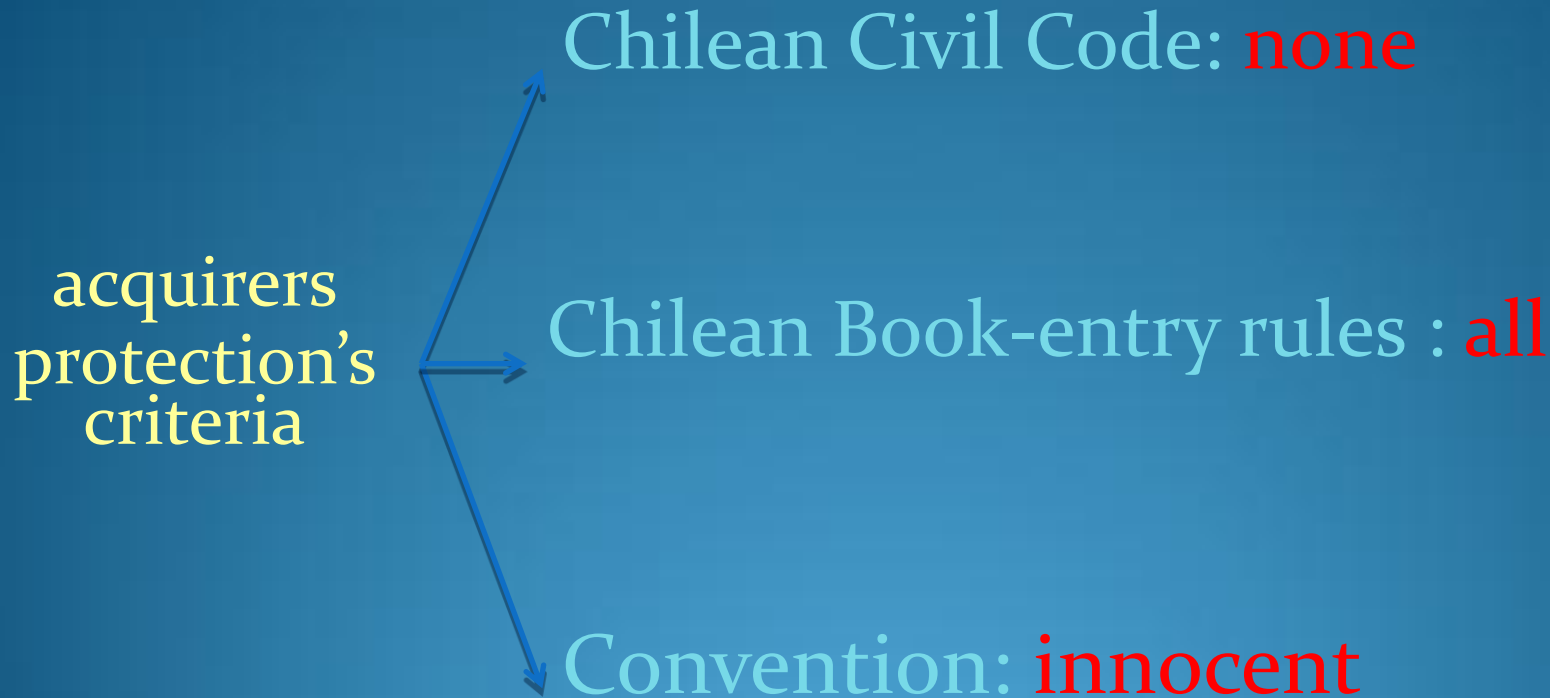
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Chilean Law: valid

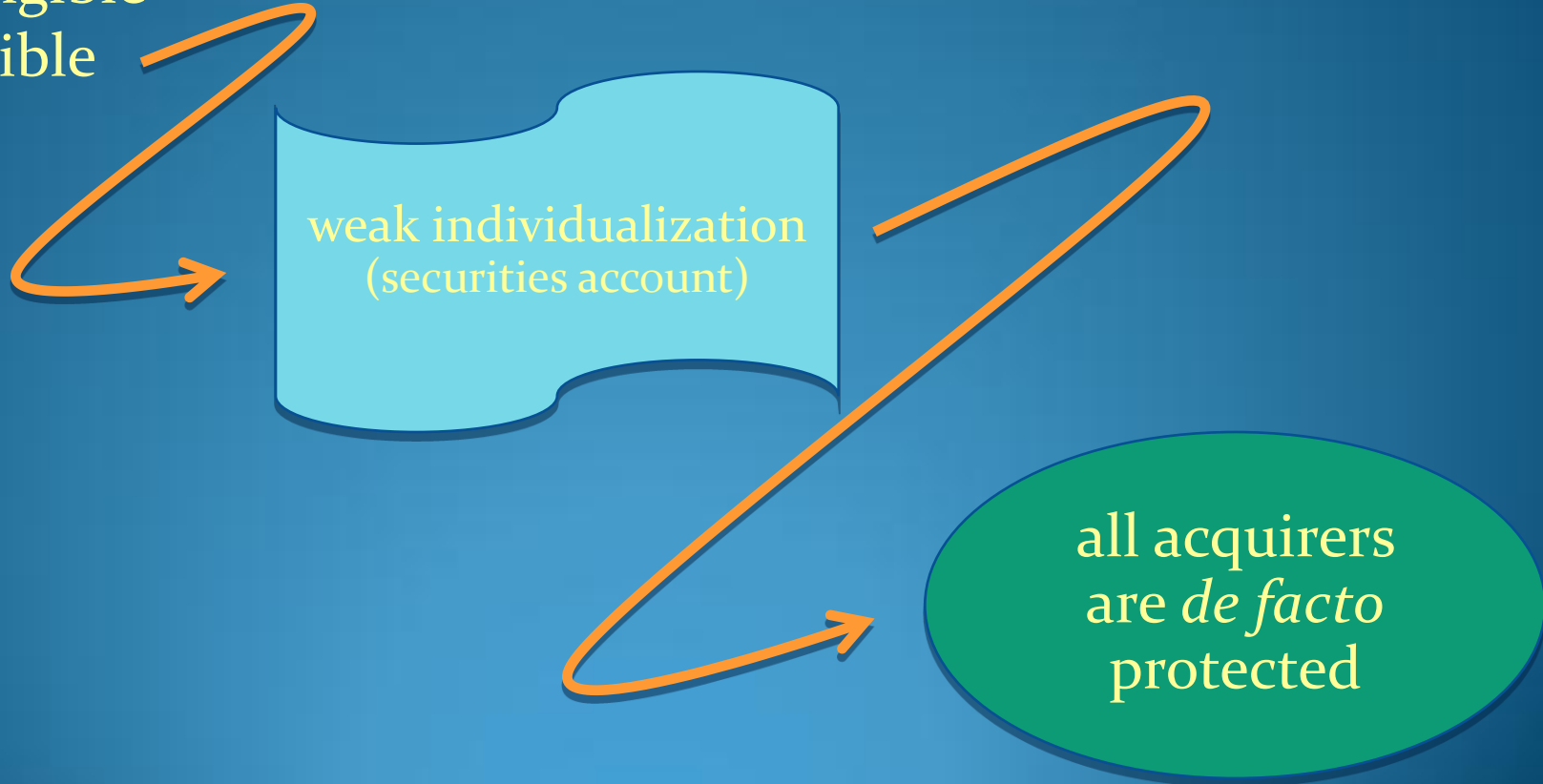


## II PART: CHILEAN LAW



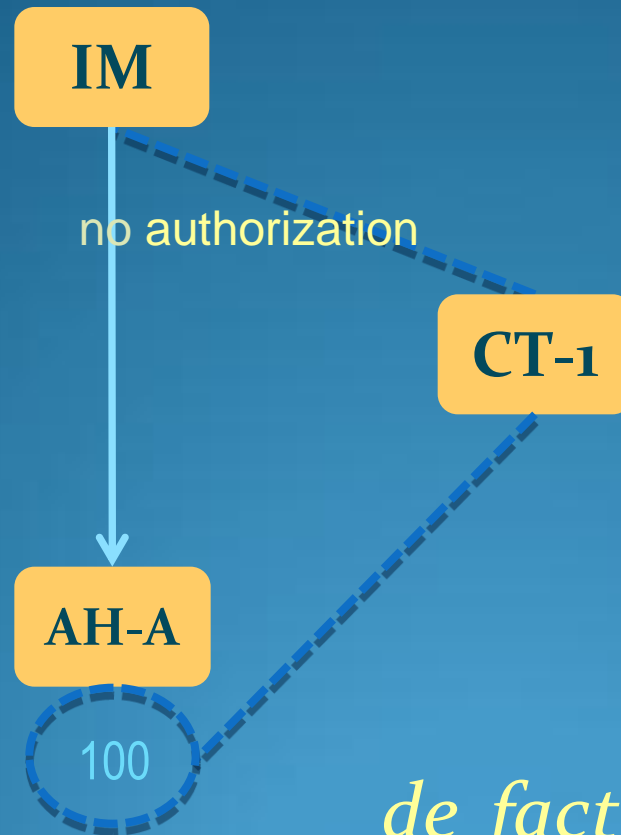
# Features of book-entry securities

- intermediated
- intangible
- fungible



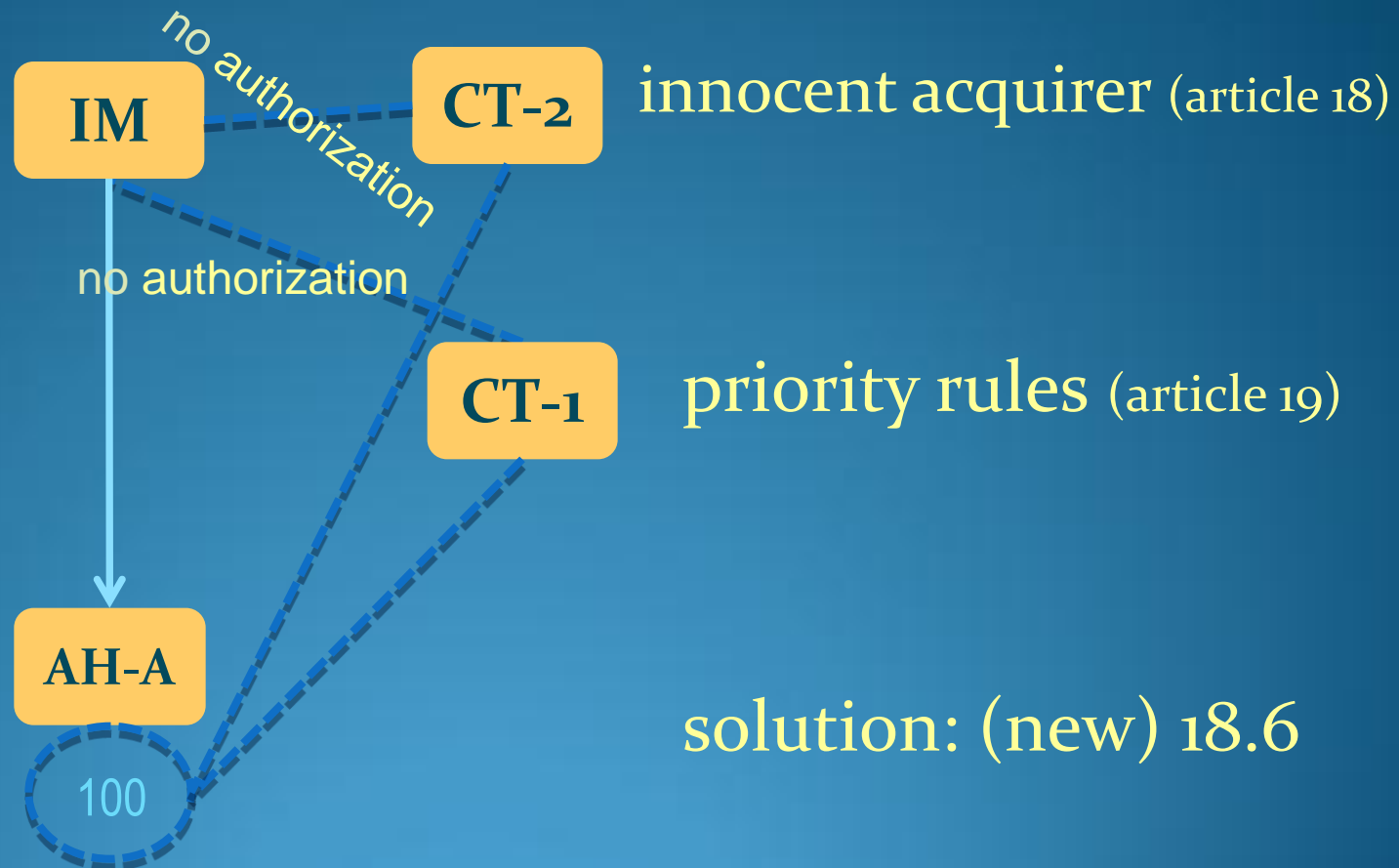


# Traceable book-entry securities

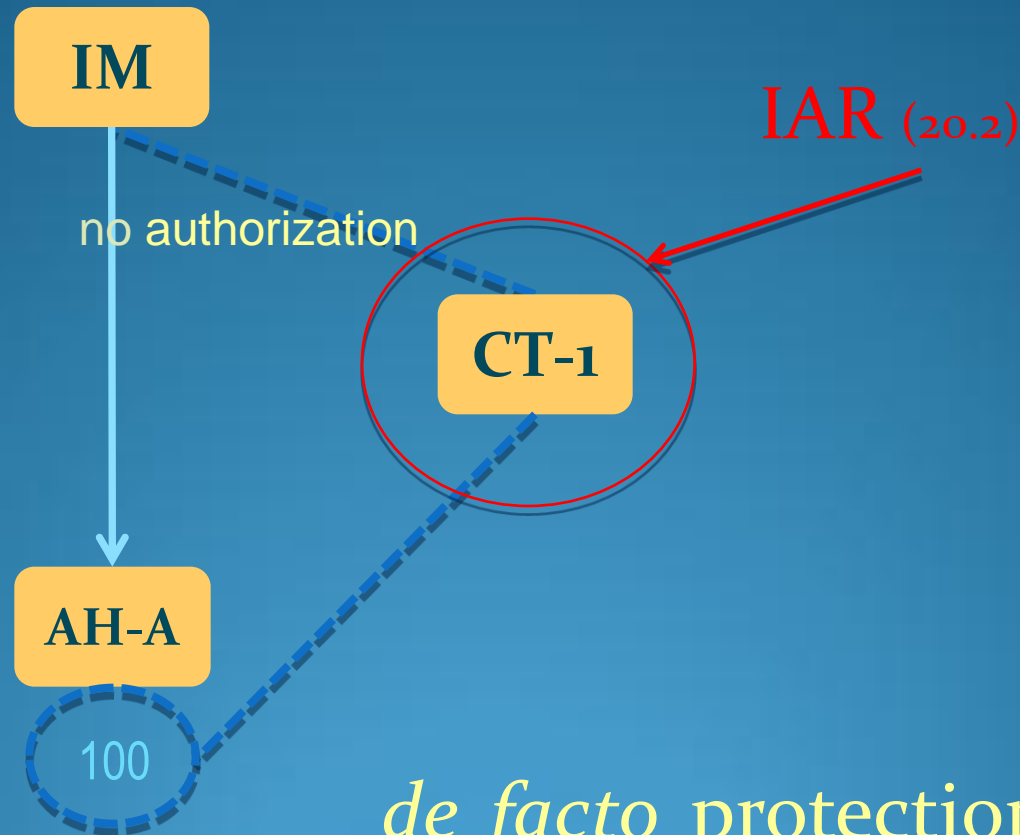


*de facto* protection does not apply and a rule is needed

# Problems of “acquirer” broad sense



## “exception” to 18.6 rule



*de facto* protection does not apply and a rule is needed

# CONCLUSION

**KNOWLEDGE DOES AND SHOULD MATTER**



**THE END**