

**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

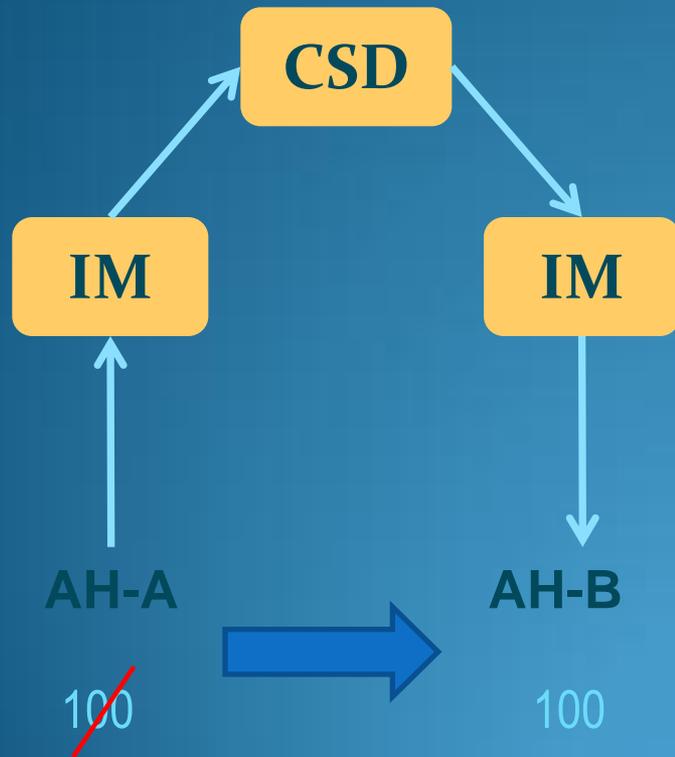
The situation under Chilean Law

ACQUISITION AND DISPOSITION

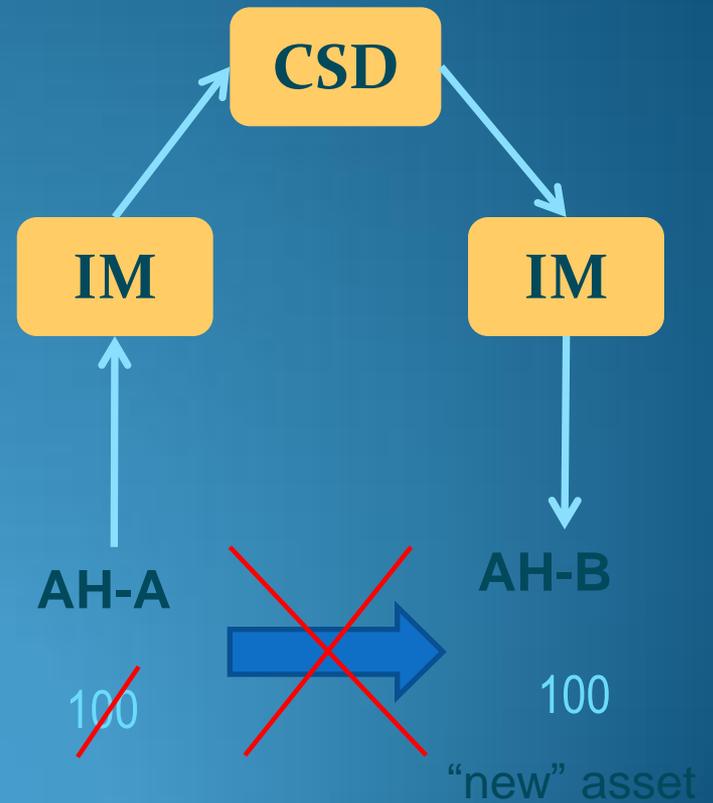
- FIRST RULE: credit is enough to render the acquisition effective against third parties (11.2)
- SECOND RULE: invalidity, reversal and condition is left to NCL (16)
- THIRD RULE: innocent acquirer is protected even if credit/designation entry is invalid/reversible (18)

FIRST RULE: SEPARATION PRINCIPLE

➤ Single transfer
(derivative acquisition)



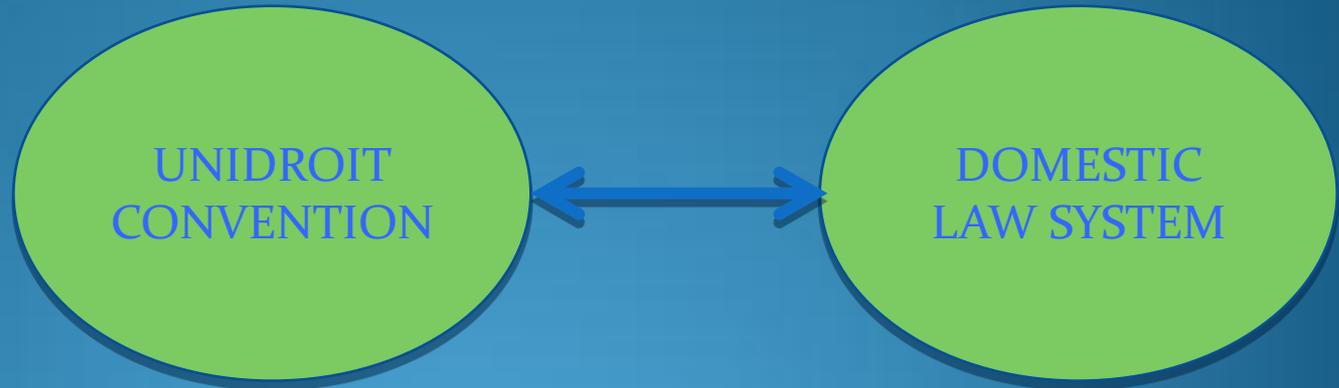
➤ Creation new interest



SEPARATION PRINCIPLE AND FUNCTIONAL APPROACH

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

Case: State z
(derivative acquisition system)



HARMONIZATION: i.e., no credit without debit rule

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~~

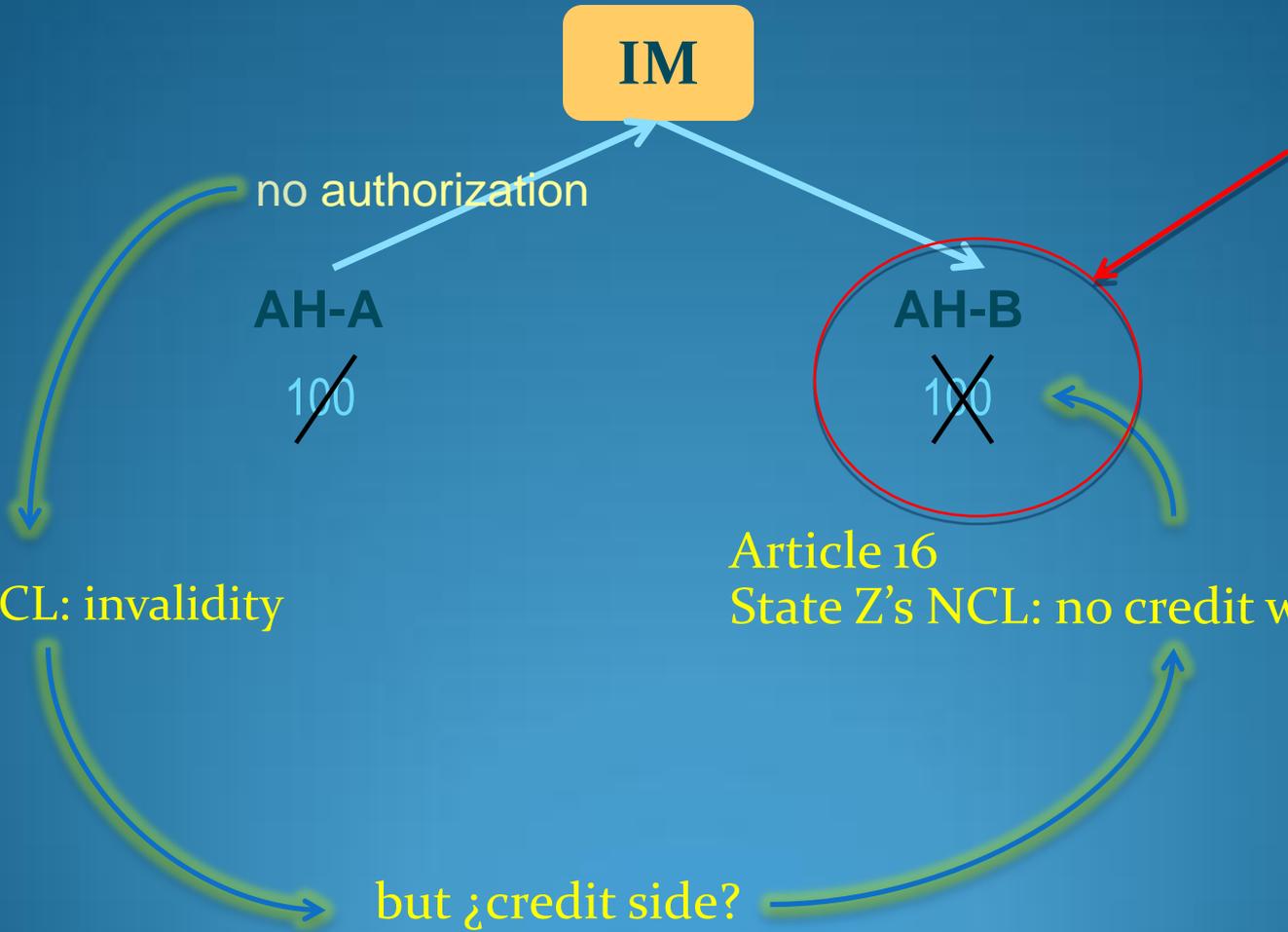
AH-B

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Article 15
State Z's NCL: invalidity

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

but ¿credit side?

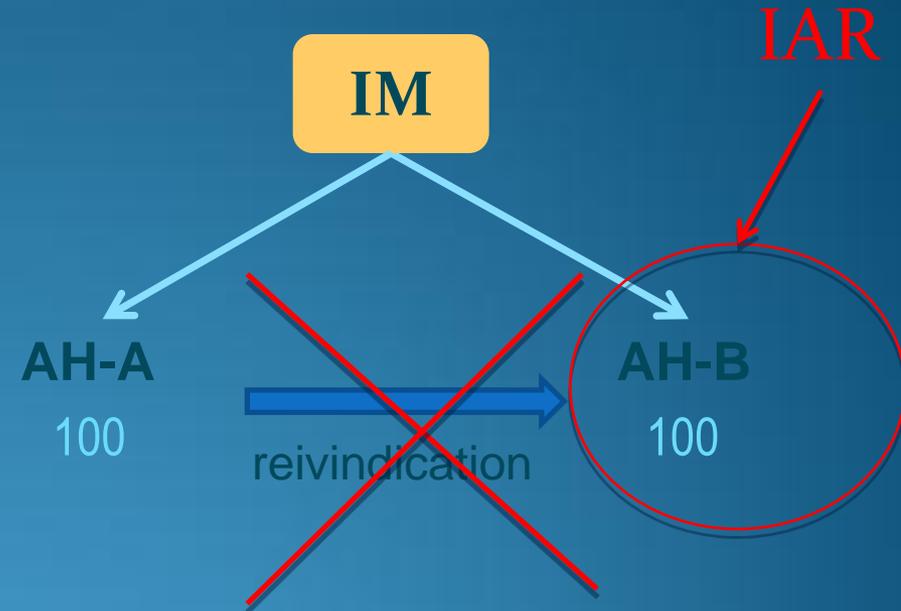


IAR ESTRICTURE (I)

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”.

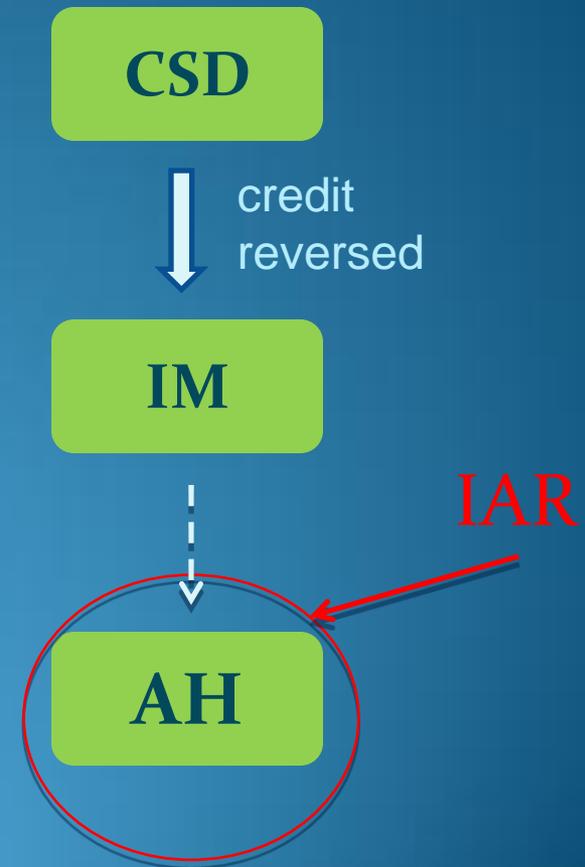


IAR ESTRICTURE (II)

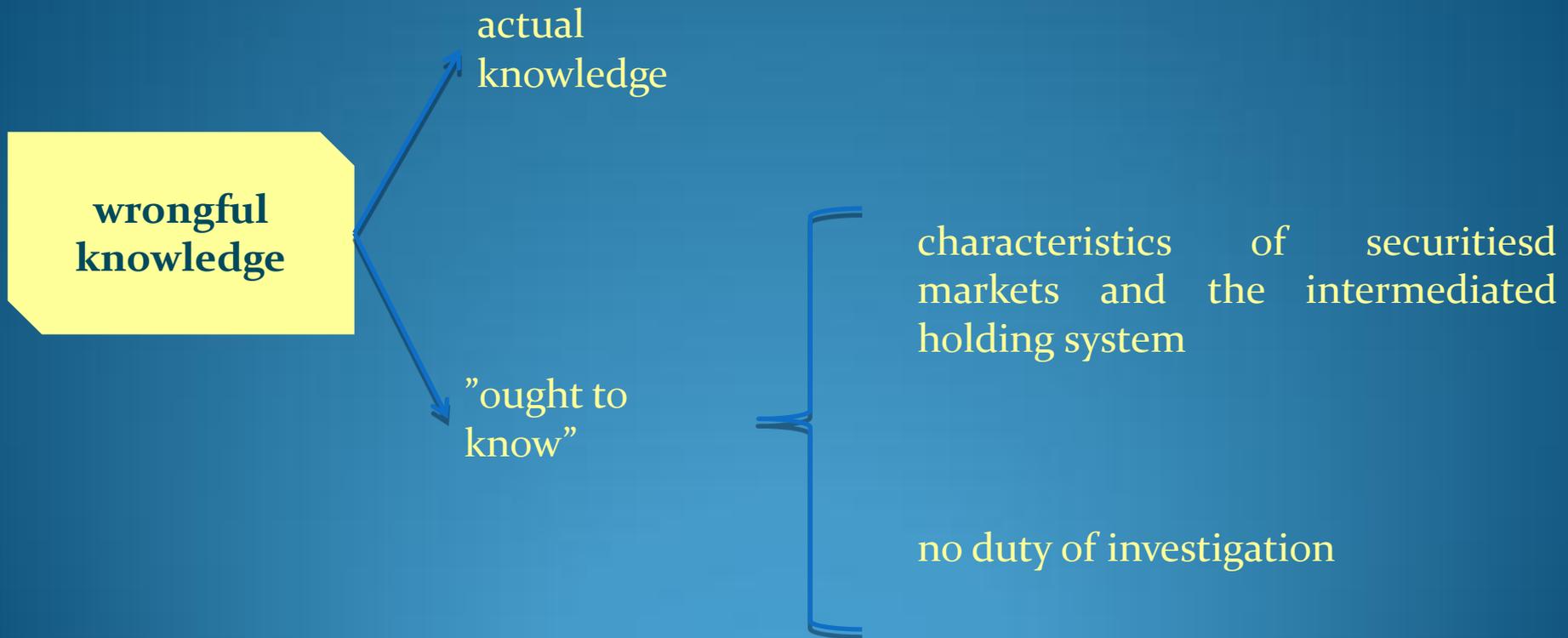
➤ Paragraph 2

- 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 ESTRICTURE (III)



II PART: CHILEAN LAW

Civil Code

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

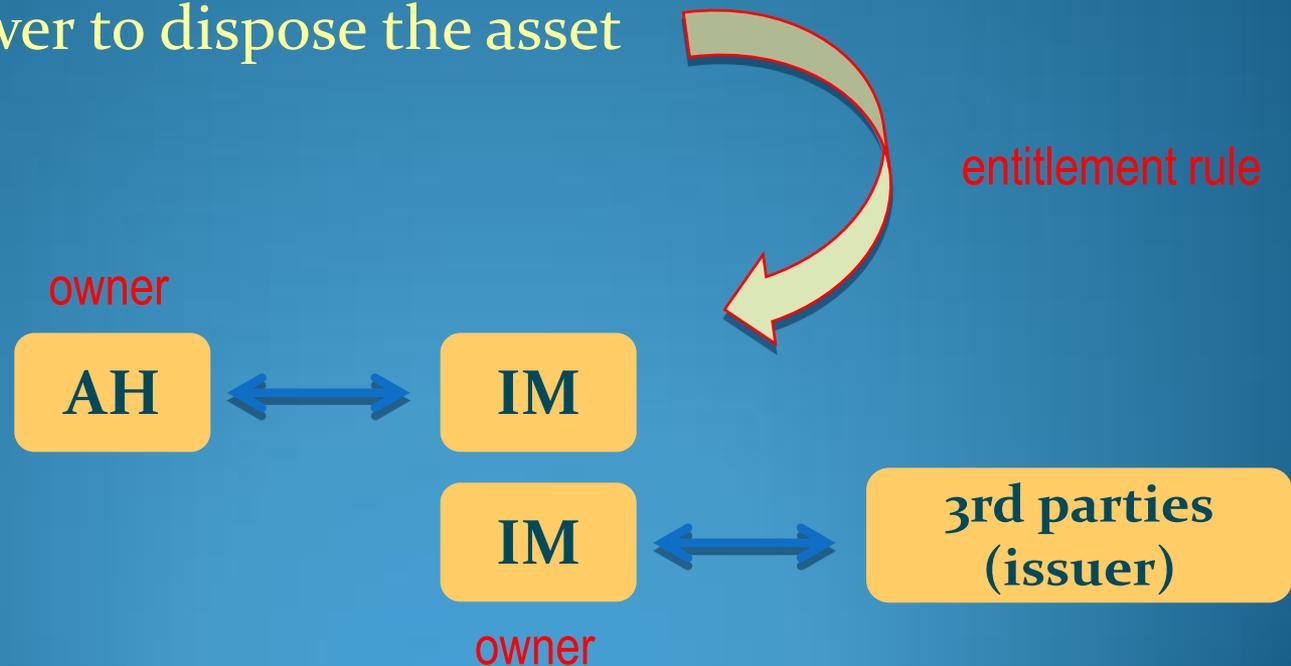
- consent
- legal capacity
- legal power to dispose the asset
- delivery

II PART: CHILEAN LAW

Book-entry rules

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

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



II PART: CHILEAN LAW

UNAUTHORIZED DISPOSITION

IM

no authorization

AH-A

~~100~~

AH-B

100

Chilean Law: valid



II PART: CHILEAN LAW

acquirers
protection's
criteria

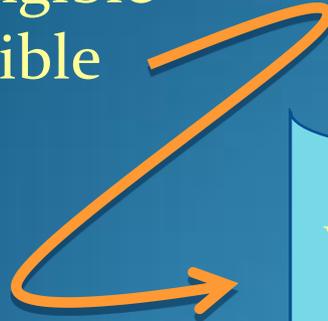
Chilean Civil Code: **none**

Chilean Book-entry rules : **all**

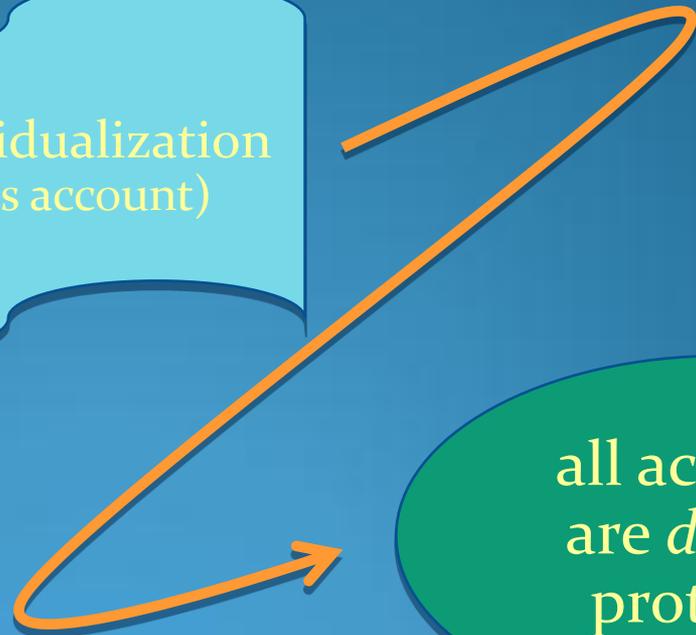
Convention: **innocent**

Features of book-entry securities

- intermediated
- intangible
- fungible

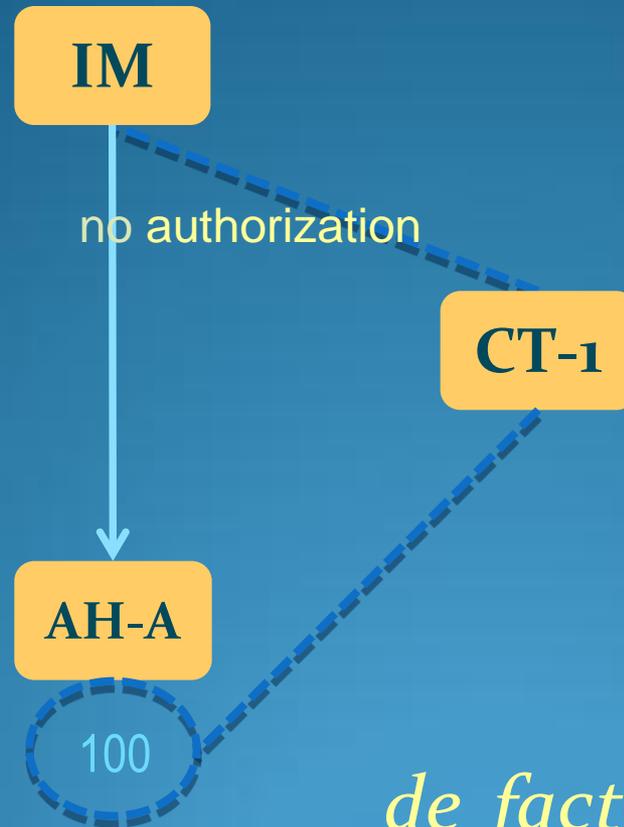


weak individualization
(securities account)



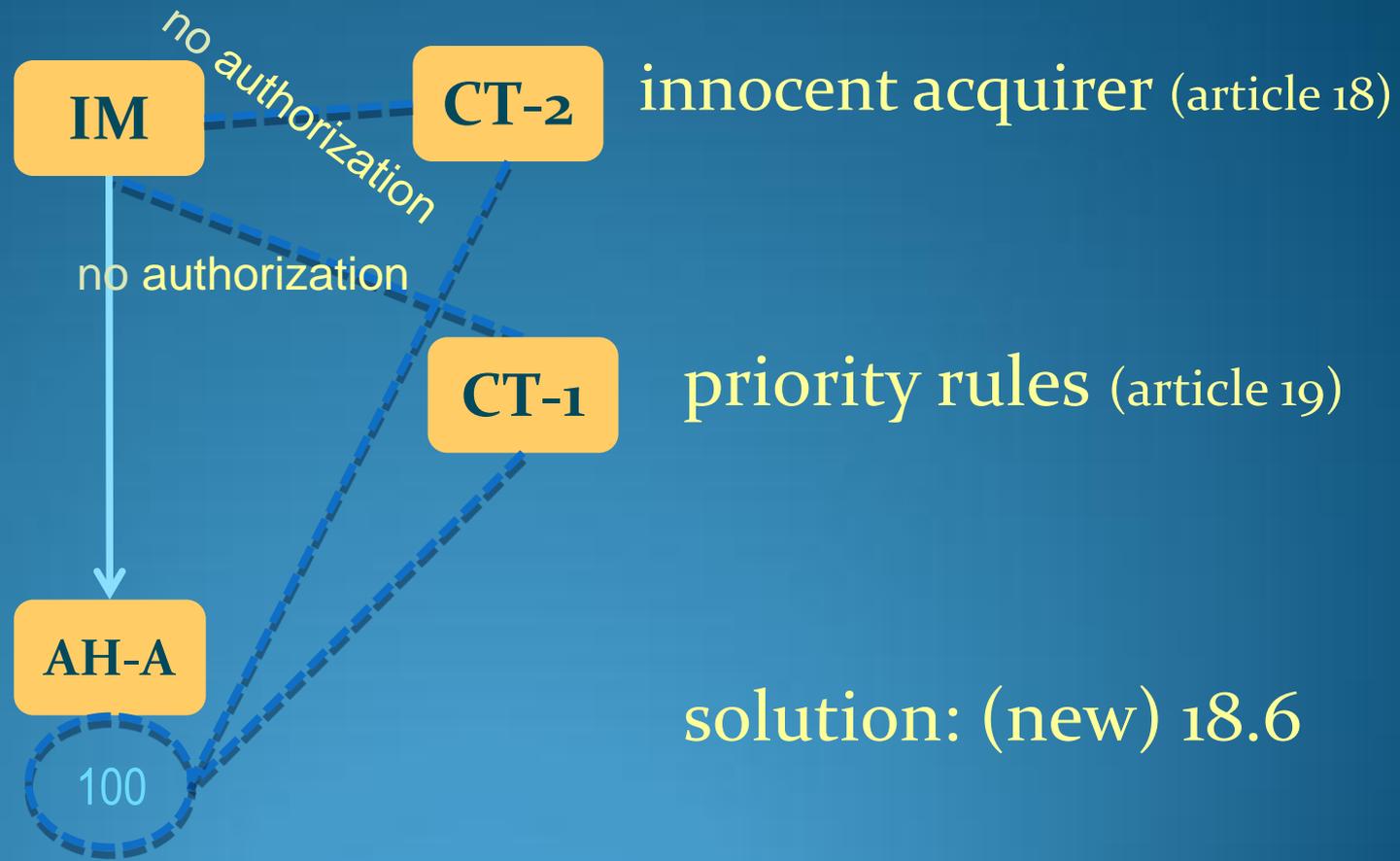
all acquirers
are *de facto*
protected

Traceable book-entry securities

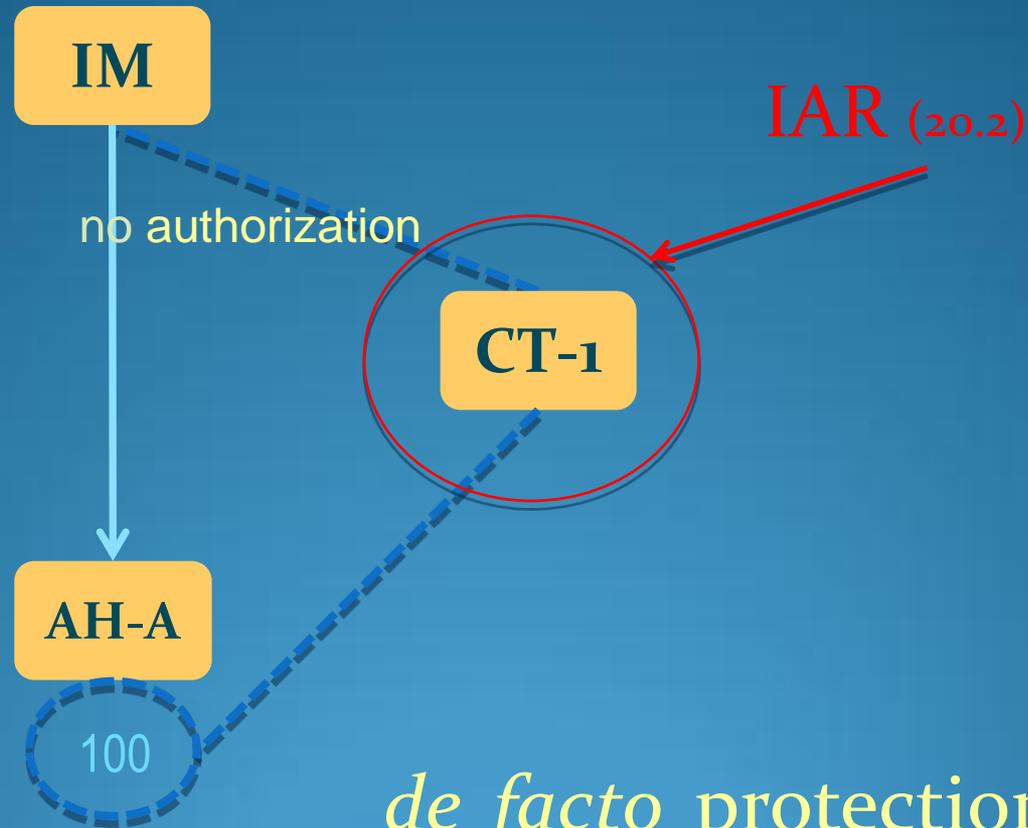


de facto protection does not apply and a rule is needed

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