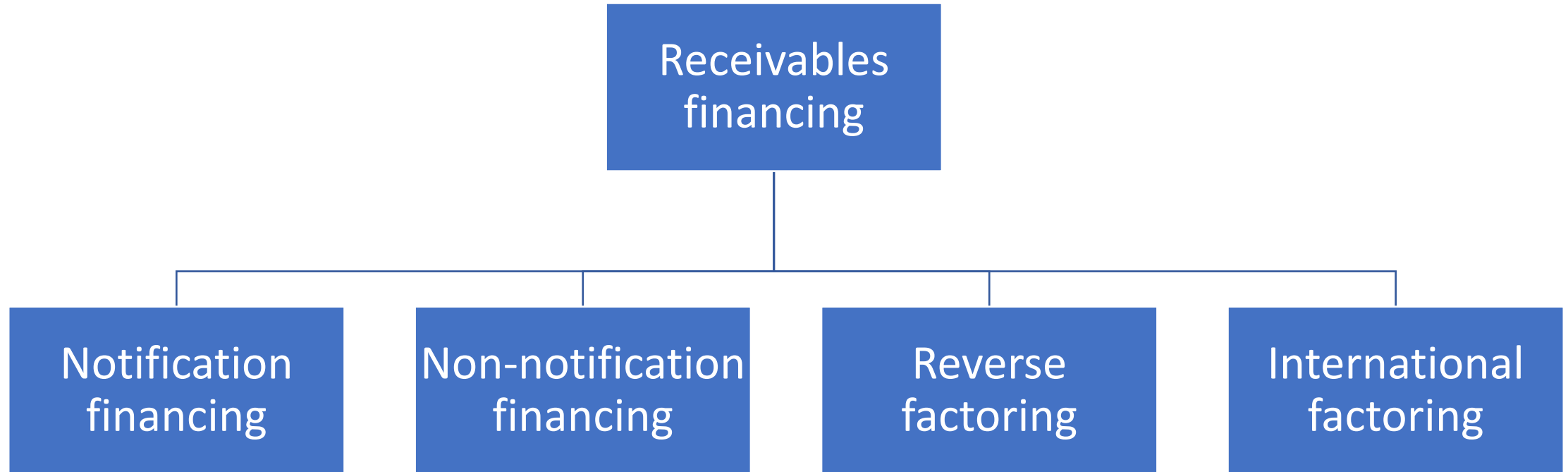


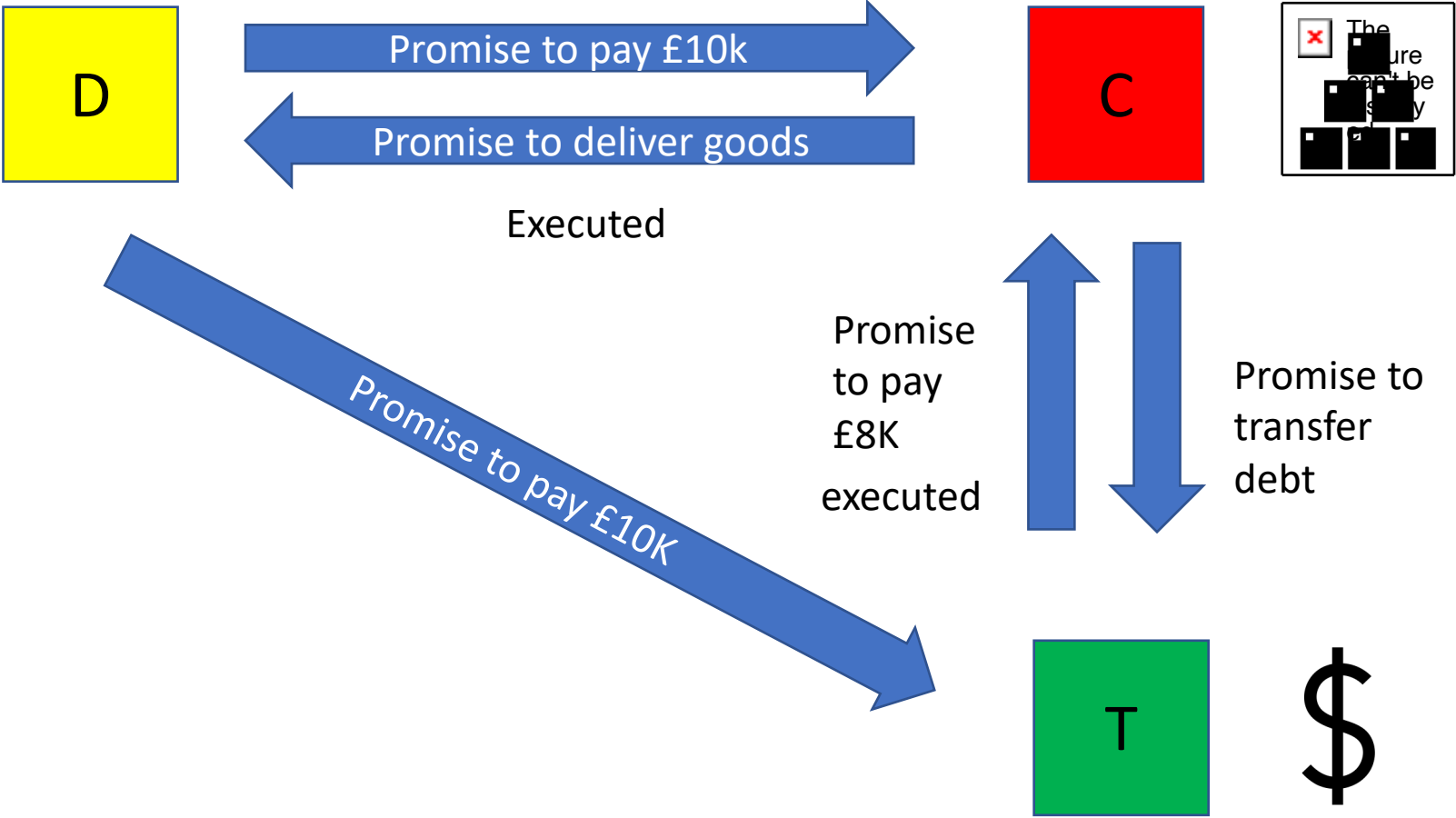
# UNIDROIT Model Law on Factoring

Professor Louise Gullifer,  
Rouse Ball Professor of English Law,  
University of Cambridge

# What is factoring?



# Receivables financing



# Different types of receivables financing

- Notification financing
  - Debtor is notified of transfer
  - Debtor pays transferee
- Non-notification financing
  - Debtor is not notified of transfer
  - Debtor pays Creditor (transferor)
  - Creditor (transferor) passes on proceeds to transferee
- Reverse factoring/payables financing
  - Debtor led: Debtor offers supplier (Creditor) early payment financed by transferee
  - Receivable is transferred to transferee
  - Defences and set-offs waived
- International factoring
  - Debtor and Creditor are in different countries
  - Debts transferred to Export Factor, who pays money to exporter (Creditor)
  - Debts then transferred to Import Factor who collects payment from Importer (Debtor) and transfers money collected to Export Factor.

# Why a model law?

- Some instruments already
- Ottawa Convention on International Factoring (UNIDROIT) 1988
  - Only applies to factoring of international receivables
  - No rules on priority
- UNICITRAL Receivables Convention
  - Applies to international factoring and factoring of international receivables
  - Optional rules on priority
- UNCITRAL Model Law on Secured Transactions
  - Applies to all secured transactions over all types of assets and to outright transfers of receivables.
  - Provides for a central registry of secured transactions and outright transfers of receivables.
- Model Law on Factoring
  - Simplified model only focused on factoring: easier for many states to implement than the MLST
  - Could be a first stage to the implementation of the MLST
  - Takes into account technological developments

# Scope of the model law

Covers transfers of receivables



## Transfer

- Outright transfers
- Security transfers
  - Transfer for purposes of security
  - Creation of security right

## Receivable

- a contractual right to payment of a sum of money arising from:
  - the supply or lease of goods or services;
  - the assignment or licence of intellectual property; or
  - the payment obligation for a credit card transaction.

# What the Model Law covers

## Transfers

- (how to do it, what can be transferred, override of clauses prohibiting transfer)

## Effectiveness against Third Parties

- (registration, detailed registry rules)

## Priority between competing transfers and other competing claims

## Rights and Obligations of the parties

- (notification of the debtor, payment, defences and set-off)

## Collection and enforcement

- (simple for outright transfers, more complicated for security transfers)

## Conflict of Laws

## Transition

# Transfer

## Transfer agreement

In writing

Identifying transferor and transferee

Describes receivable(s)

## What can be transferred

Present and/or future receivables

Generic category or receivables or all the transferor's receivables

Transferee also has a right to the proceeds (money, cash in bank, negotiable instrument)

Override of anti-assignment clauses

# Effectiveness against Third Parties

- Registration system
- Notice filing system
  - Notice can be filed at any time including before transfer
  - Minimal information included in notice.
- Assumes an online system

# Priority

- Order of registration
- Transfer that is registered is effective in insolvency of the creditor

# Rights and obligations of the parties

## Who can notify the debtor of transfer

- transferor or transferee

## How debtor is discharged

- paying according to payment instruction if notified
- A to B, A to C : discharged by paying in accordance with first notification
- A to B to C: discharged by paying in accordance with last notification
- How does debtor know? Right to ask for information

## Defences and set-off

- From same contract: available to debtor at all times
- Other set-offs: if it arose before notification

# Collection and enforcement

## Outright transfer:

- Transferee can collect once due

## Security transfer

- Collection
- Sale
- Distribution of proceeds to protect transferor's right to surplus
- Parties can agree on post-default rights as long as they are not inconsistent with Model Law

# Conflict of laws

## Mutual rights and obligations of transferor and transferee

- Law chosen in transfer agreement
- Law governing transfer agreement

## Mutual rights and obligations of debtor and transferee

- Law governing rights and obligations between debtor and transferor

## Effectiveness of transfer and priority, also enforcement

- Law of State where transferor is located

Law applicable to a transfer is not affected by insolvency proceedings of the transferor.