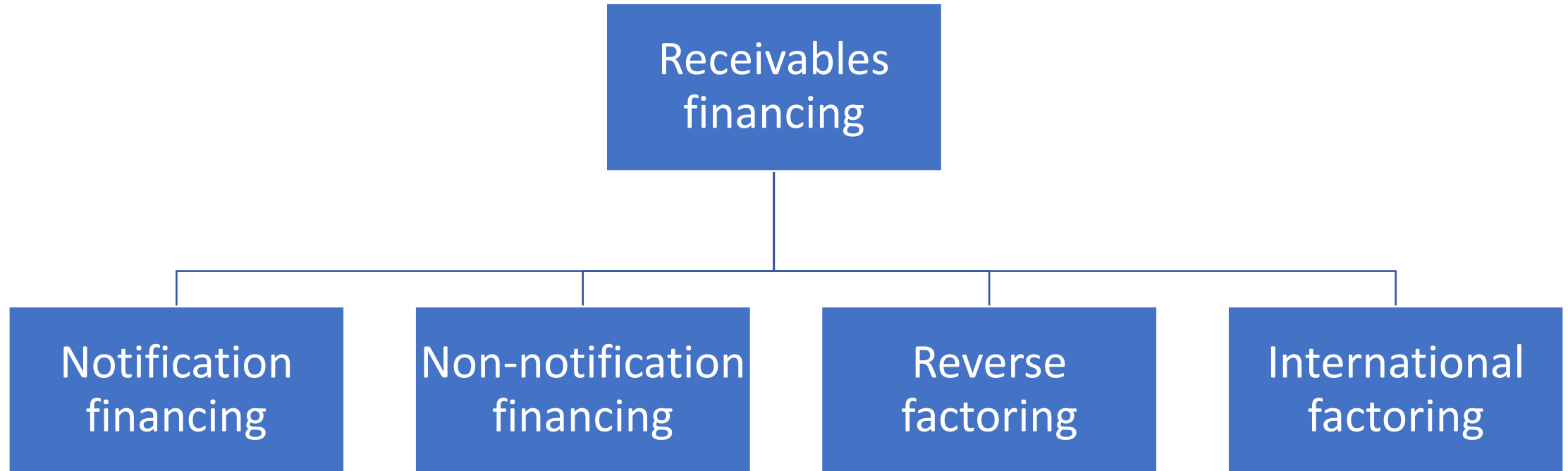


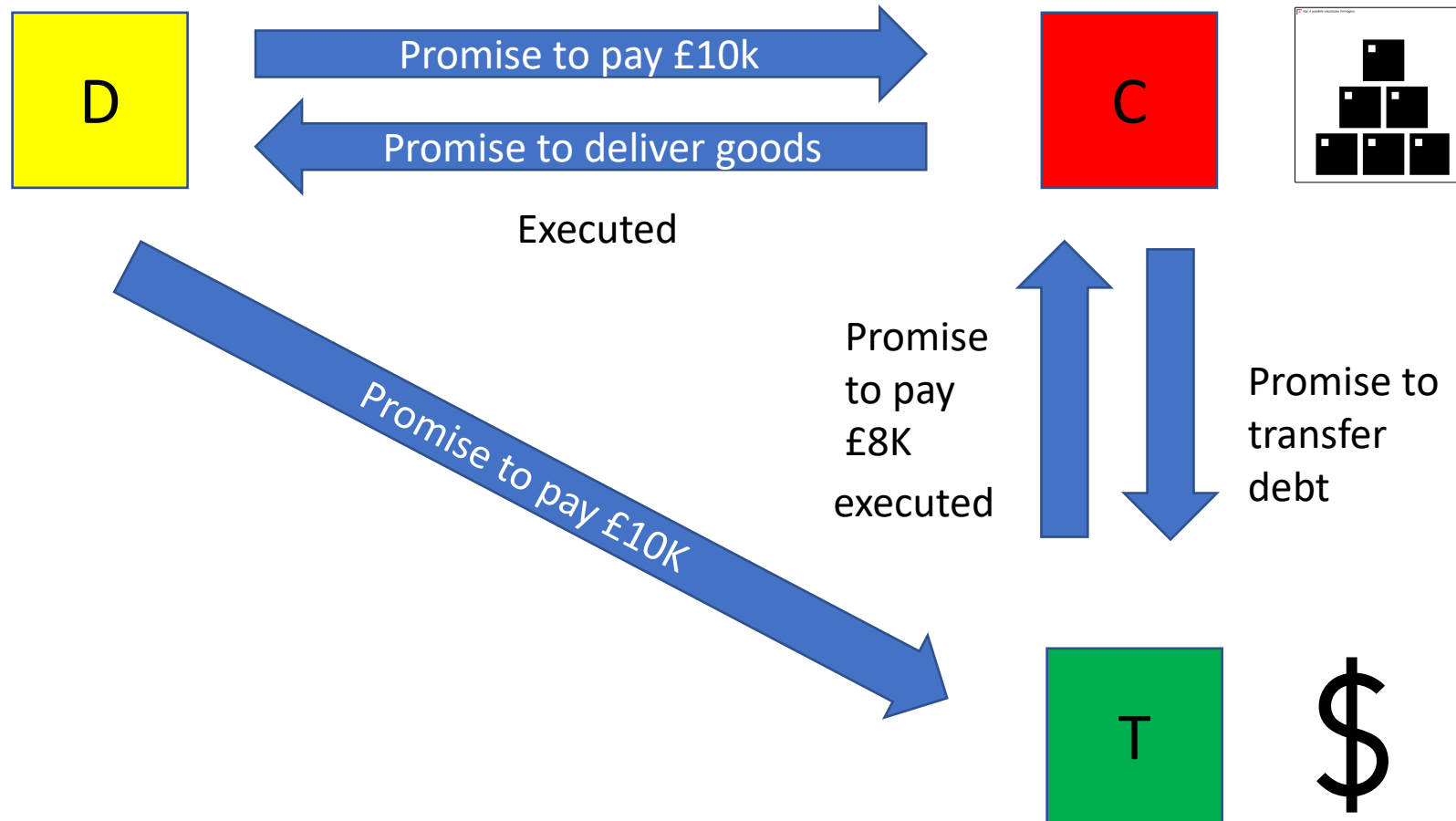
UNIDROIT Model Law on Factoring

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
 - Only notification factoring
- 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



Transfer

Receivable

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

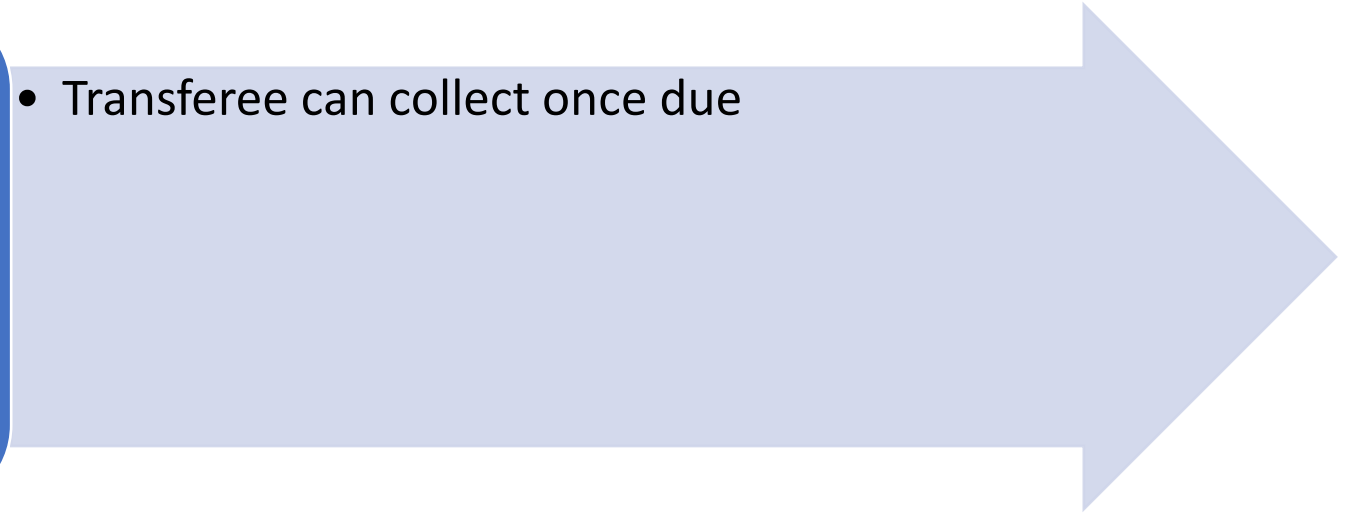
- transferor or transferee

How debtor is discharged

Collection and enforcement

Outright
transfer:

- Transferee can collect once due



Conflict of laws

Mutual rights and obligations of transferor and transferee