

# TABLE OF CONTENTS

<b>Preface</b>	<b>ix</b>
<b>Acknowledgements</b>	<b>xi</b>
<b>PART I</b>	
<b>1 INTRODUCTION</b>	<b>3</b>
1.1 Background	3
1.2 Structure	6
<b>2 SECURITISATION AND THE 2007/08 GLOBAL FINANCIAL CRISIS</b>	<b>9</b>
2.1 Nature and process of securitisation	9
2.1.1 Definition of securitisation	9
2.1.2 Process of securitisation	10
2.2 Origin of securitisation	13
2.3 The global financial crisis	16
2.3.1 The subprime mortgage crisis	16
2.3.2 The interbank credit crisis	18
2.3.3 The solvency crisis	18
2.4 The role of securitisation in the global financial crisis	19
2.4.1 Creation of complex financial products	20
2.4.2 Amplification of losses	25
2.4.3 Opacity	26
2.4.4 The originate-to-distribute narrative	27
2.5 Conclusion	28
<b>3 SECURITISATION: ECONOMIC FUNCTION AND VALUE</b>	<b>31</b>
3.1 Financial value of securitisation	32
3.1.1 Securitisation as a funding tool	33
3.1.2 Securitisation as a risk management tool	38
3.1.3 Securitisation as an investment tool	40
3.2 Securitisation as an instrument for economic growth after the GFC	40
3.2.1 Basel III framework	41

TABLE OF CONTENTS

3.2.2	Credit-impact analysis of Basel III and the motivation for the revival of securitisation	44
3.3	Conclusion	47
<b>PART II</b>		
<b>4</b>	<b>METHODOLOGY FOR ANALYSIS OF TRANSFER SOLUTIONS</b>	<b>53</b>
4.1	The functional approach	53
4.1.1	An overview of the approach	53
4.1.2	Limitations of the approach	55
4.1.3	Relevance of the approach	57
4.2	The law and economics approach	57
4.2.1	An overview of the approach	57
4.2.2	Basic concepts and models	65
4.2.3	Pareto efficiency and Kaldor-Hicks efficiency: application and research scope	69
4.3	Legal transplant	71
4.3.1	An overview of the concept	71
4.3.2	Relevance and application to this research	72
4.4	Conclusion	73
<b>5</b>	<b>TRANSFER OF RIGHTS UNDER SCOTS LAW</b>	<b>75</b>
5.1	Security rights in Scots law: nature and constitution	76
5.1.1	Definition and types of security rights	76
5.1.2	Types and constitution of real security rights	77
5.1.3	Concluding comments	89
5.2	Accessory principle and transfer of security rights under Scots law	89
5.2.1	Initial comments	89
5.2.2	Accessoriness of real security	90
5.2.3	Concluding comments	97
5.3	Solutions available for transferring security rights in securitisations under Scots law	98
5.3.1	Initial comments	98
5.3.2	Assignment	98
5.3.3	Trust	110
5.4	Conclusion	114

<b>6</b>	<b>TRANSFER OF RIGHTS UNDER ENGLISH LAW</b>	<b>115</b>
6.1	Accessory principle and transfer of security rights under English law	115
6.1.1	Overview of the English law of security rights	115
6.1.2	The accessory principle	117
6.1.3	Concluding comments	120
6.2	Solutions available for transferring security rights in securitisations under English law	120
6.2.1	Initial comments	120
6.2.2	Novation	121
6.2.3	Assignment	124
6.2.4	Trust	129
6.3	Conclusion	134
<b>7</b>	<b>TRANSFER OF RIGHTS UNDER FRENCH LAW</b>	<b>137</b>
7.1	Introduction to the French securitisation legal framework	137
7.1.1	An overview of the French legal framework prior to the French Securitisation Act of 1988	137
7.1.2	The 1988 Act and its reforms	140
7.1.3	New securitisation entities under French law	141
7.2	Assignment of rights under the FCC	142
7.2.1	Introduction and general overview	142
7.2.2	The accessoriness question under articles 1321ff of the FCC	144
7.2.3	Limitations of assignment of rights under the FCC	150
7.3	Transfer by way of subrogation	151
7.3.1	An overview of French law on subrogation	151
7.3.2	Subrogation: advantages and disadvantages for securitisations	152
7.4	Assignment under the Dailly law	153
7.4.1	General overview of Dailly assignment of receivables	153
7.4.2	Dailly assignments: advantages and disadvantages for securitisations	154
7.5	Assignment under French securitisation law (i.e. FCT assignment or French <i>bordereau</i> )	156
7.5.1	General overview of FCT assignments	156
7.5.2	FCT assignments: advantages and disadvantages for securitisations	157
7.6	Conclusion	157

*TABLE OF CONTENTS*

<b>8</b>	<b>LAW AND ECONOMICS ANALYSIS</b>	<b>159</b>
8.1	The publicity principle	159
8.1.1	Nature	159
8.1.2	Scots law	160
8.1.3	English law and French law	163
8.1.4	Concluding comments	166
8.2	Comparative analysis	167
8.2.1	Initial comments	167
8.2.2	Policy one: debtors should be protected	169
8.2.3	Policy two: third-party protection	175
8.2.4	Policy three: facilitation of future receivables transfers	178
8.2.5	Policy four: facilitation of non-publicity transfer	188
8.2.6	Policy five: validity of transfer	191
8.2.7	Policy six: the accessorium principle	195
8.2.8	Efficiency analysis	198
8.3	A case for a model solution	200
8.3.1	Initial comments	200
8.3.2	The accessorium principle revisited	200
8.3.3	Effect of the assignor's insolvency on assignments of future receivables	202
8.3.4	Registration costs	203
8.3.5	Registration-only approach for securitisations	204
8.3.6	Concluding comments	205
8.4	Transferability of the model solution	206
8.4.1	Initial comments	206
8.4.2	The divergence	209
8.4.3	Applicability in English law	210
8.4.4	Applicability in French law	212
<b>9</b>	<b>CONCLUSION</b>	<b>215</b>
	<b>BIBLIOGRAPHY</b>	<b>217</b>