The relativity of titles to land is a fundamental feature of property holding in the common law system. It is treated as one of the features that distinguishes it from civilian systems of property holding and proves the pragmatic stuff from which the common law is made.
Although the principles of title applying to land are well known and comprehensively explained in the literature, the way that they apply to other kinds of property has hardly been touched upon. This article seeks to expand the inquiry by investigating the full breadth of the relativity principle across all branches of the law of property. One question is the extent to which relativity of title, as a feature of property holding at common law, applies to chattels. It is proposed here that it does, but with the important difference that a relative title to a chattel is more easily extinguished than a relative title to land. A second question is more fundamental: whether the title conferred by an equitable interest in an asset is relative, in the same way as a legal title to a tangible asset is. The view developed in this article is that relativity is as much a feature of the enforcement of equitable titles as it is of legal titles to tangible property. A third, and related, question is whether relativity applies to legal titles to intangible property. The view proposed is that it is generally impossible to have a relative legal title to a purely intangible asset.

The article begins by examining the core case of relativity of title: the title to possess generated by a person's being in adverse possession of unregistered land. It elucidates some of the main features of, and reasons for, the relativity principle. The article then develops definitions of the concepts of “title” and “relativity” before turning to an investigation of the three main questions outlined above.

Certain themes link all parts of the inquiry and establish its general importance. The first is the inseparability in common law reasoning of rules of evidence and procedure from the substantive law of property. The enforcement of titles to an asset is governed by evidential presumptions about the existence of claims to that asset and by the rules on joinder of parties applying to disputes over it. The second theme is the fundamental link—which is commonly overlooked—between the resolution of disputes over title to an asset and the rules of priority which determine the ranking of competing interests. Once this link is appreciated, it will be seen that the relativity principle applies far more widely across the law of property than is commonly thought.

I. The Core Case: Adverse Possession of Unregistered Land

Suppose that one party (“P1”) has a valid paper title to the land under an unregistered fee simple estate. A second party (“P2”) squats on the land and dispossesses him. By virtue of his possession, P2 acquires a title to the land enforceable against all third parties who cannot prove a title which is positively stronger than his own. His title is sufficient for him to sue any trespasser who interferes with his possession or generally to allow him recover possession from any third party (“P3”) who in turn may dispossess him.

An evidential presumption applies under which P2 is treated as holding a fee simple estate in the land. The presumption would in fact be the same whether the person whom he dispossessed had title to the land under a freehold or leasehold estate. The modern rule derives from the old rule of evidence that as against a wrongdoer a...
person in possession of land was presumed to have seisin in fee simple. Since the presumption of P2's title arises from his having taken possession of the land, his estate is treated as being newly created, not deriving by grant from P1. So long as P1's title to possession remains enforceable, his paper title to an estate is treated as continuing independently of, and concurrently with, the equivalent estate of P2.

Provided that time has not run under the Limitation Act 1980, P1's title to possess the land remains stronger than P2's and he may bring an action to recover the land from him. Accordingly, we say the validity of P2's title is relative, in the sense that it is void against P1 but generally valid against any third person ("P3") who interferes with his possession. If P3 were to interfere in this way, his only defence would be to prove that his title was stronger than P2's, as it would be if it derived by valid grant from P1. It is no defence to P3 that he can prove that P2's title is weaker than P1's. The long-established rule is that P3 cannot defend his wrongful possession of land by proving the jus tertii, i.e., the right of possession of a third party, P1, which is stronger than that of the claimant, P2. If P3 is to succeed at all, he will do so by the positive strength of his own title relative to P2's, not by the weakness of P2's title relative to P1's.

II. "Title" Defined

The definition of "title" is elusive since the sense in which the word is used varies with the context. Sometimes it is used in a very loose sense as a synonym for ownership. So it is that we would say that a bare trustee holding an asset as a nominee for another has the legal title to the trust asset and the beneficiaries have the equitable title to it. The word also takes on specific meaning in the context of the Land Registration Act 2002. The word "title" refers in that context to the extent to which a proprietor's claim to a registered estate is indefeasible and backed by a state guarantee that a proprietor will be paid an indemnity if it turns out that that his entry as proprietor is mistaken. So it is that a proprietor of registered freehold estate may be registered as having an "absolute", "qualified" or "possessory" title to it, which confers upon the proprietor a different level of guarantee by the state.


None of these uses quite captures the specific sense in which the word "title" is used in this article. As a starting point, title is best understood as referring to a claim to an asset arising from a proprietary interest. In its strict sense, title does not refer so much to the content of the claimant's proprietary interest—i.e., to the incidents of practical enjoyment which his interest in the asset confers on him—but to the strength of his claim to that enjoyment, relative to other people who have similar interests in the same asset. Inherent in the notion of title is the question whether one person's claim to those incidents is stronger or weaker than that of other potential claimants. Professor Goode has expressed the point as depending on the difference between the quantum of the claimant's right to the asset and the strength of that right as against others.

Once this meaning of title is understood, it makes sense to speak of two claimants having competing titles to an asset where their claim is something less than ownership. Examples could be given of competing titles to the enjoyment of profits à prendre over land, such as exclusive fishing rights. There may be a dispute over which grantee has the better right to take fish from
the waters on the grantor's land. This would be a dispute about the strength of one grantee's title relative to that of the other. This dispute would be wholly different from one about the content of the grantee's enjoyment of the fishery, such as the weeks of the year when he was permitted to exercise his right, and what species of fish he was allowed to take.

While it is true that in the core case of adverse possession of land the rival parties make competing claims to possession, the same is not necessarily true for other kinds of asset. The connection between title and possession is contingent. The key connection is that between title and the ability to assert and defend the benefit inherent in the interest concerned. Since title consists essentially in a claim, what the claimant can enforce by his title depends entirely on the content of his interest in the asset and the incidents of practical enjoyment which the nature of the asset permits. In the example given, the rival grantees of the exclusive fishing rights have a claim to take fish from the grantor's land but not to be in possession of it. Similarly, if we suppose a case where there are competing equitable assignments of a debt, the main incident of the assignees' equitable title is their right to compel the assignor to sue on the debt. It makes no sense to say that their title confers on them a claim to possess the debt—the debt is intangible.


To summarise then, relativity of title is about the respective enforceability of competing claims to vindicate the incidents of enjoyment inherent in some particular proprietary interest.

III. Absolute and Relative Titles Compared
(i) Absolute Title to Assets

We could suppose a property holding system which recognised only absolute titles to assets. In such a system, it would be impossible to create competing interests of the same kind in the same asset, each of which conferred on its holder equivalent entitlements to enjoy it. The best illustration is the right of Quiritary ownership in classical Roman law. Since the content of the right is not directly relevant for present purposes, it will be enough to say that Quiritary ownership amounted to full beneficial ownership of the asset concerned. More relevant in this context was the unitary and exclusive character of Quiritary ownership. It was an inherent incident of Quiritary ownership that only one such interest could exist in an asset. In strict principle, it made no sense to conceive of two or more Quiritary owners concurrently holding their rights, with each right conferring a competing title to the asset. In the strict sense therefore the title of the Quiritary owner was absolute.

Camb. Law J., 65 [2006], pp 330–365 at 335

The theory of the classical Roman law was to exclude the possibility of relative ownership rights. The title of the Quiritary owner had to be the best since, by definition, no other ownership interest could exist to compete with it. English law, however, freely permits the possibility of more than one fee simple estate existing concurrently in the same land. As has been seen, it applies a presumption in favour of the person in possession of land that he holds it under a fee simple estate. The presumption allows what are, in effect, multiple fees simple to be created in the same land. While the Roman law could only contemplate the right of the Quiritary owner
being valid in an absolute sense, the English approach allows the possibility that an estate in land can at the one time be valid and void, depending on which other claimant's title it is compared with.

A further refinement should be added to what is meant here by an “absolute” title. The word does not have the same meaning here as it does when we speak of a “fee simple estate absolute in possession”. In that sense, it means that the claimant's interest is of potentially unlimited duration and extent, within the limits of the law. The contrast is with a determinable or contingent interest, the duration of which potentially limited or which may not vest until an uncertain future event occurs. In that sense, “absolute” refers to the content of the claimant's right over the asset, not to the relative strength of his title to it.

The significance of the Roman law comparison is that it illustrates the permeability of the common law distinction between rules of evidence in procedural practice and rules of substantive law in recognising the existence of proprietary rights. In the common law, possession of property could be treated as evidence of a good title arising from some underlying proprietary interest, notwithstanding that there was almost certainly some other claimant who could assert an equivalent proprietary interest in the asset. To a large extent, presumptions of evidence determined a claimant's right of recovery rather than any conceptual theory of substantive proprietary interests.

(ii) Absolute Versus Best Title to Assets

We must distinguish also between the concepts of an “absolute” and the “best” title to an asset. In this article an “absolute” title will be taken as one which is unitary and exclusive, like the title conferred by the strict conception of Quiritary ownership. The existence of such a title necessarily excludes the possibility of any equivalent proprietary interest conferring a competing title on a different claimant.

The “best” title to an asset will not necessarily be absolute in this specific sense. The best title is one which is superior to that of any other person but it may still not be absolute. An example is the title of a proprietor of a registered freehold estate in land. His title to the land is for all practical purposes indefeasible: subject to interests taking priority over his estate and to very narrowly defined grounds of alteration, the fact of registration guarantees his title to enjoy all the normal incidents of ownership. However, although the registered proprietor's title in fact is guaranteed to be the best, it is not necessarily absolute. His title still lacks that characteristic of unitary absoluteness which necessarily excludes the possibility of another person having an equivalent interest at the same time. A squatter can still take adverse possession of the registered land and in doing so he establishes a relative title to possess under a fee simple estate, which is enforceable against all but the registered proprietor.

The significance of the distinction is to illustrate that although English law was content to recognise the notion of the “best” title to an asset, it was not thereby accepting the theory
underlying the Roman law conception of Quiritary ownership which would have absolutely excluded the possibility of any competing claim to the asset arising from an equivalent interest. Rules to determine the best title to assets are fully consistent with a theory of relativity of title.

(iii) Relativity of Title and Priority of Interests

A third point that needs to be clarified is the difference, if any, between disputes which turn on competing titles to an asset and those which turn on the resolution of a priority conflict among competing interests. The view proposed here is that there is no sharp distinction in kind between the disputes described in these two ways. All disputes about relativity of title can be recast as disputes about priority. Any dispute over “stronger” or “weaker” titles to an asset is resolved by the rules of priority applying to assets of that kind.

We typically speak of a dispute over title when the claimants assert competing, but equivalent, interests in the same asset, such as when a squatter and the proprietor of a registered estate claim possession of the land. We generally speak of a priority dispute when the claimants assert different kinds of interest in the same asset, which may confer incompatible incidents of enjoyment to the asset. An example would be the equitable interest of a beneficiary in occupation under a trust of land and the legal charge of a mortgagee of the land who seeks an order for possession. Both confer rights to possess the land but the nature of each interest is different. The distinction between competing titles and priority rules is a loose one, but, for the most part, it is not important to try to draw it sharply. For once the differences in terminology are stripped away, it will be seen that disputes over competing titles necessarily depend on rules of priority.

Any property system which allows the creation of multiple valid titles to the same asset needs priority rules to determine the strength of those titles relative to each other. To speak of a “better title” or a “stronger title” necessarily presupposes priority rules which have ranked the competing titles into their proper order. Priority rules are therefore essential to resolving disputes arising from the relativity of titles. It follows that title disputes can be recast as disputes over priority among competing interests in the same asset. For example, the rules by which we resolve the familiar title disputes found in the common law—such as between a paper title holder of unregistered land and a squatter—can be re-expressed by saying that priority is generally awarded to whichever claimant relies upon the earlier title. The claim of the paper title holder is stronger precisely because it arose earlier in time than the squatter's, and he takes advantage of the classical rule of common law priorities that legal interests bind the world. The same, it will be argued, is true of competing equitable titles to an asset. Their enforceability relative to one another depends on the relevant rule of priority which applies to interests in assets of that kind.

This fundamental similarity between common law and equity is overlooked for two reasons. First, disputes over competing
equitable titles to an asset tend to be expressed in terms of the priority of competing interests in the asset rather than in terms of relativity of title. This is in contrast with the classic common law disputes over titles to tangible property which tend to be expressed in terms of the relative enforceability of those titles, rather than in terms of the priority of interests. The second reason for the obscurity is that equity sometimes applies a priority rule to resolve disputes over relative titles which does not depend on the order in which the titles were created. It will be argued, for example, that a common case of relativity of title in equity arises from multiple assignments of the same debt. These tend not to appear as disputes over title because they are resolved by a priority rule that depends on the giving of notice to the debtor, rather than the usual rule—more common to title disputes at law—that priority depends on the order in which the competing titles were created.

Once these differences are put aside as essentially linguistic and the connection between relativity of title and priority is established, it will be seen that the principle of relativity is far more widespread than might at first appear.

(iv) Reasons for Relativity of Title

The rule that P2 can enforce a merely relative title to land illustrates the pragmatic approach of the common law to the proof of title and the resolution of disputes to property. There are many reasons for allowing it and only a few of them need be sketched out here.22

First, the presumption of a legal title from the fact of possession is important to resolving uncertainties in evidence when proof of a valid paper title conferred by a chain of conveyances may be doubtful. When supported by rules on the limitation of actions, a theory of title by possession quietens title to assets by eliminating the risk of competing claims to it, whether spurious or well founded. With real property in particular, it has been shown that the combination of limitation rules and the relativity principle facilitates conveyancing and promotes the free alienability of land.23 Secondly, relativity of title is a concomitant of the fact that, in the absence of a conclusive system of title registration, it may be difficult for a claimant to prove that he has the best title to the disputed asset. To force him to establish this would require the proof of a universal proposition—that there is no other person with a title superior to this own. Even in a system which only requires


facts to be proved to the standard of balance of probabilities, such proof can be difficult, given that there is an unascertained number of individuals who would need to be considered to see whether they had a claim to the property.24 Thirdly, the rule that allows a person to sue on a merely relative title to land shows the preference of the common law for discouraging the social disruption that comes when one person unjustifiably interferes with the settled possession of another. The presumption of title in a mere possessor of an asset illustrates one of the many instances where uncertainties in evidence are resolved against a wrongdoer.25

Beyond these commonly cited reasons, there are two overarching explanations for the breadth of the relativity principle at law and in equity. One is the effect of relevant rules on joinder of
parties which apply to the proceedings where the title to the disputed asset is litigated. It will be seen that a relative title is more likely to be recognised and enforced when the claimant is not required to join to his action a third person who might have a stronger claim to the asset. This is generally the case at common law. But the more stringent rules of joinder in equity have tended to require an equitable claimant to join any party who is believed to have a stronger title than his own. This allowed finality in the litigation. As a result, it has been uncommon for a claimant to sue successfully on a merely equitable relative title, which may explain why the operation of the principle in equity has been obscure.

Second, the fact that proceedings to determine property rights operate in personam makes it practically impossible to reach a determination binding on the world at large that a particular claimant has the best title to an asset. Any determination that the court may make only binds those people who are joined as parties to the action. An estoppel by record operates between them, which prevents a party to the original proceedings from disputing it in a later action. The corollary is, however, that a third person who had an interest in the subject of the original proceedings but who was not joined as a party to them, would be not be estopped from raising the same issue in fresh litigation. So even on the hypothesis that a court were to rule in the original proceedings that P2 had the best title to the disputed asset, its determination could not bind a third person, P1, who in fact had a better title but who was not joined as a party to the original proceedings. Acknowledging that inherent limitation on the courts' powers, English law has often been content to allow a claimant to sue on a title which was obviously relative.

With this background established, let us consider how the relativity principle applies in different areas of property law.

IV. Relative Legal Titles to Tangible Personal Property

Alongside the well-known doctrines of adverse possession of land, there are corresponding principles which apply to personal property. The simplest example is the possessory title of a person who finds a lost chattel. Suppose that P2 finds and takes into his possession a lost chattel which belongs to P1. As against P3, a wrongdoer who interferes with P2's possession of the chattel, P2's possession is evidence that he has a title enforceable by action in trespass or conversion. P2's title arises as soon as he is in possession of the chattel. It is not the case that he must wait till the relevant limitation period has elapsed so as to extinguish the cause of action and title of P1. In this respect, possessory titles to personal property are explained by rules which are similar to those applying to real property where a squatter is presumed to have a title through a fee simple estate, regardless of whether the paper title holder's interest has been extinguished.

There are three main differences in the creation and enforcement of possessory titles in real and personal property. First, under section 8 of the Torts (Interference with Goods) Act 1977, there
are situations where a defendant in the position of P3 may plead the jus tertii of P1. The intention of the provision is that the court


would require P1 to be joined as a party to the action, with the result that P2 would be barred from recovering on the strength of his possessory title. The competing claims to the asset can be resolved in one set of proceedings. The Civil Procedure Rules which give effect to this provision require the claimant to name every person who is believed to have an interest in the disputed goods so as to allow the defendant to apply to have that person joined as party. In principle, therefore, this exception would only afford P3 a defence if he knew P1's whereabouts and if P1 were available to be joined as a party. If P1 were the undiscovered owner of a lost or stolen chattel, the old common law rule would still apply. P3 would be barred from pleading the jus tertii of P1 in defence to P2's claim on his possessory title.

The rule that the jus tertii could not be pleaded in claims arising from dealings with personal property was generally observed before the enactment of the Torts (Interference with Goods) Act 1977, whether the plaintiff sued in trespass or in trover for conversion. Before the Common Law Procedure Act 1852 abolished the forms of action, the relevant elements which the plaintiff was required to plead in his declaration of trover were as follows:

[The plaintiff] … was lawfully possessed, as of his own property, of certain goods and chattels, to wit, [the goods were then listed] of great value, to wit, the value of _ pounds … ; and being so possessed thereof … casually lost the said goods and chattels out of his possession; and the same afterwards … came into the possession of the [defendant] by finding … and afterwards … converted and disposed of the said goods and chattels to his [the defendant's] own use.

The cases and writers accepted that a plaintiff with a purely possessory title could plead that the goods were “as of his own property”, as the form of declaration required. So the finder of a lost jewel could sue in trover to enforce his limited property against


a person who wrongfully withheld the jewel from him. A bankrupt could sue a person who interfered with his possession of the goods, notwithstanding that the property in the goods might have passed by statutory assignment from the bankrupt to the trustee in bankruptcy. A buyer of wood who took delivery of it under a void grant from the seller would have a sufficient title to sue a person in trover who interfered with his possession of the wood. This would follow even though the property in the goods might remain in the seller because the grant was ineffective. In all these cases, if the defendant alleged that the plaintiff was not possessed of the goods “as of his own property”, he was effectively raising the jus tertii, though the explicit language of that plea by the defendant does not appear in the judgments of the court. The court would not accept the plea in trover just as it would not have accepted it in an action in trespass.

The second difference between real and personal property is that legal estates cannot be created in personalty. Therefore so far as it is necessary to describe the content of the interest of a
person with a possessory title to a chattel, he would be presumed against a wrongdoer to have an
ownership interest in it, not an estate. We have seen that with real property there was an
evidential presumption applied against wrongdoers that a person in possession of land had seisin
in fee simple.\footnote{Pollock, Camb. Law J., 65 [2006], pp 330–365 at 343} With chattels, the evidential presumption arising from possession of a chattel had
to be different. The classical statement of the rule is that of Sir Frederick Pollock:

Camb. Law J., 65 [2006], pp 330–365 at 343

[P]ossession is prima facie evidence of ownership … [F]or the very reason that possession in fact
is the visible exercise of ownership, the fact of possession, so long as it is not otherwise
explained, tends to show that the possessor is the owner: though it may appear by further inquiry
that he is exercising either a limited right derived from the owner and consistent with his title, or
a wrongful power assumed adversely to the true owner.\footnote{Pollock, Camb. Law J., 65 [2006], pp 330–365 at 344}

Pollock explains the rule in terms of the content of P2's interest. That is to say, P2 is presumed to
have an ownership interest in the chattel which he possesses, which is why he has title to sue
wrongdoers who interfere with that possession. Pollock might have been trying to produce a
consistent explanation across both real and personal property that property rights can be
presumed from the fact of possession. However, in contrast to the approach of Pollock, it is very
rare for the earlier cases or writers to speak of the person with a possessory title to a chattel as
having an ownership right in it.\footnote{Pollock, Camb. Law J., 65 [2006], pp 330–365 at 345} They were generally unconcerned with the content of whatever
interest P2 might have. They simply spoke of his having a title to the chattel and considered the
enforceability of that title relative to other claimants. If ever they spoke of his having property in
the chattel, they would generally only say that he had a “special property”. A special property
was the interest of a person who was in possession of goods but who held them subject to the
title of another person who had the general property.\footnote{Pollock, Camb. Law J., 65 [2006], pp 330–365 at 346} The common examples were the special
property of a bailee in relation to a bailor, a carrier to an owner of goods, or a factor to his
principal. The relationship between a finder of goods and the true owner was explained in the
same terms. In nearly all cases, a person could not have the special property in goods unless he
had them in his possession.\footnote{Pollock, Camb. Law J., 65 [2006], pp 330–365 at 347}

This difference in approach between the quotation from Pollock and that of earlier sources is
understandable. In a typical case where P3 interferes with P2's possession of the chattel all that
matters is that P2 has a sufficient title relative to P3 to enable him

Camb. Law J., 65 [2006], pp 330–365 at 344

to sue in trespass or conversion. The issue is the relative strength of the parties' claims to
possession of the asset, not the content of the interest which entitles P2 to sue P3. Strictly, it
would only be necessary to refer to P2 as having a relative ownership right in the chattel if the
issue were between P2 and some person who claimed to derive title from him, as where P2
offered to sell the chattel to a potential buyer,\footnote{Pollock, Camb. Law J., 65 [2006], pp 330–365 at 347} or if a person wanted to lend money on the
strength of P2's apparent ownership of the chattel.\footnote{Pollock, Camb. Law J., 65 [2006], pp 330–365 at 348} That person could fairly treat P2's possession
as evidence of an ownership interest which he would acquire in the transaction, or as sufficient
evidence that P2 was good for the repayment of the loan which he made. But between P2 and a
wrongdoer, P3, all that mattered was that P2's title to possession was stronger than P3's.
The third difference between real and personal property is that a relative title to personal property seems to be more vulnerable to extinction than a relative title to real property. In general, it only survives so long as P2 remains in possession of the chattel. By contrast, the standard view of the modern writers is that, subject to the extinction of titles under the Limitation Act 1980, any number of relative fee simple estates can be created in land. So, for instance, Megarry and Wade write: “[The squatter has, in fact, a legal estate, a fee simple absolute in possession. But so also has the [original owner], until such time as his title is extinguished by limitation … [T]here is thus no absurdity in speaking of two or more adverse estates in the land, for their validity is relative”.49

It seems, however, that it is generally impossible for more than two ownership interests to exist concurrently in personal property, the best one in the original owner and the other relative one in the possessor for the time being. Accordingly, it is generally thought that once a person with a purely possessory title to a chattel has been dispossessed, he loses his title to it.50 He acquires in substitution a purely personal right of action in trespass or conversion against the person who wrongfully dispossessed him. The practical powers arising from whatever continuing title he may have to the chattel are very slim indeed. Apart from some exceptions discussed below, he has no continuing title to the chattel


on which to found an action against a third person, P4, to whom the dispossessor passes the chattel. His only right is the chose in action enforceable against the person who dispossessed him. As a bare cause of action, the traditional common law rule before the enactment of section 25(6) of the Judicature Act 187351 was that such a right could not be assigned. Moreover, his power to alienate his surviving interest in the chattel is much attenuated. He cannot make a simple gift of the chattel itself since an effective conveyance requires a delivery of possession, and he lacks it to give. He would have to resort to making the gift by deed.52 Owing to the rule that allows title to goods to pass by an executory contract, he could sell his limited interest to a third party.53 But the donee by deed or the buyer under the contract would, of course, take subject to all the weaknesses in the donor's or seller's title so he could have no claim to recover the goods from a third party to whom the dispossessor passed it. The transaction would confer a worthless benefit. The reasons for this result will be explained in turn.

The presumption of title in P2 is generated by the fact that he is in possession of the chattel and that his possession is enforceable against all third parties who cannot claim any lawful title to dispossess P2.54 But the presumption has its limits. It applies so long as P2 remains in possession, or if he is wrongfully dispossessed by another, P3, then the presumption that P2 has title applies as between himself and P3. It does not necessarily apply as between P2 and P4, a third person who acquires the chattel from P3 without deriving title through P3's original wrong against P2. So, for instance, if P4 stole the chattel from P3, then P2 might have no right of action in conversion against him, since he would not be presumed to have any continuing title to the chattel at the time of P4's conversion. The policy of protecting possession only goes so far as to give P2 a right of action in trespass or conversion against P3. Since P4 did not unlawfully interfere with P2's possession, the presumption of title would not work in P2's favour. It could not be
presumed that P2 maintained a subsisting title to the chattel at the time when P4 converted it from P3.

On the other hand, if P4 derived title to the chattel from P3 (as he would if P3 made a gift or sale of the chattel to him), then there is very slim authority in the South Australian decision of Field v. Sullivan that the presumption of title would apply as between P2 and P4, so as to make P4 liable to P2 in conversion. In that case Macfarlan J. said:

[P2] is in possession of goods, he is prima facie in lawful possession of them, and prima facie has the right to that possession; in the absence of any evidence to the contrary, in any proceedings that possession is proof of ownership; but that possession may be divested out of him, either lawfully or unlawfully. If unlawfully, his right to possession remains. As against the person who unlawfully deprived him of his possession [P3], or those claiming through him [P4], [P2's] possession (even if wrongful) up to the time of seizure, is sufficient evidence to establish his right to possession.\(^{55}\)

Macfarlan J.'s statement derived from some obiter dicta of the Court of King's Bench in Buckley v. Gross,\(^{56}\) a problematic decision which is considered in detail below.\(^{57}\) A simple example adapted from the facts of the classic case on possessory titles should illustrate Macfarlan J's point. In Armory v. Delamirie\(^{58}\) a chimney sweep found a jewel. He took it to a goldsmith to be valued. The goldsmith wrongfully refused to return the jewel to him. The sweep successfully sued the goldsmith in trover on the basis of his possessory title to the jewel. If we suppose instead that the goldsmith had given the jewel to his wife, then the presumption that the sweep was the owner would have applied against her as well since she derived her title through the goldsmith.

This account provides an explanation for Buckley v. Gross,\(^{59}\) an unusual case which is better known for the rule that the original owners of liquid substances which are mixed without their authority have interests in the resulting mixture as owners in common. A severe fire in some warehouses and wharves along the River


Thames caused large quantities of molten tallow to flow down the sewers and into the river. A person retrieved a lump of solidified tallow and sold it to the plaintiff. The police seized the tallow and charged the plaintiff with a crime of being unlawfully in possession of stolen goods. The magistrate dismissed the charged. However, he exercised a statutory power to keep the tallow in the possession of the police with a view to returning it to its original owner, or if that proved impossible, to make some order to dispose of it.\(^{60}\) Shortly afterwards, the police sold the tallow to the defendants. The plaintiff sued the defendants for conversion of the tallow, alleging that his former possession of the goods gave him a title to possession which was enforceable against the defendants.
The Court of Queen's Bench dismissed the plaintiff's claim. It affirmed the rule from Armory v. Delamirie that possession is good evidence of title against a wrongdoer so that a person with a purely possessory title to goods could sue one who wrongfully interfered with his possession. So, for instance, Crompton J. said: “It is clearly established that bare possession is alone sufficient to enable a person to maintain trespass or trover, against a wrongdoer who deprives him of possession”.

There were, however, two possible distinctions between that situation and the one before the court. First, the plaintiff had not been unlawfully deprived of his possession, and, secondly, the defendant had not dispossessed the plaintiff. The police took the tallow out of the plaintiff’s possession and the defendant derived title from them. The original dispossession of the plaintiff was lawful because, on one view, the policemen who seized the tallow from him held it on behalf of the original owners. It was as if they were dispossessing him by relying on a stronger title. On another view, the dispossession of the plaintiff was lawful because the magistrate acted within his jurisdiction by ordering that it should be detained from the plaintiff. As a consequence, the second point of distinction—whether a possessory title can be enforced against a defendant deriving title from the original wrongdoer—did not arise. The comments of the court on that point are therefore strictly obiter dicta. Summarising the outcome, Crompton J. said:

[The plaintiff] would still be able perhaps to maintain an action against a person wrongfully taking the tallow from his possession. But before the defendants dealt with the tallow the possession of the plaintiff had been divested, and he cannot revert to his previous possession, in order to maintain the action, unless he had the property. But here the plaintiff had no property, and his possession had been lawfully divested, and the tallow was ultimately converted by one who does not claim through a wrong-doer . . . . [V]ery possibly an action might be maintained on a bare possessory title against a person claiming through a wrong-doer; but the action to be maintainable must be either against the wrong-doer who takes the article out of the hands of the possessor, or, at all events, against one claiming title under the wrongdoer.

In the Jurist Crompton J. is recorded as having added to the version of this statement in the Law Journal Reports that since the plaintiff had been lawfully divested of the chattel “no subsequent dealing therewith, even if not altogether justifiable, [could] operate to revest in him the right of possession, so as to afford a ground of action.”

As a result, the plaintiff could not invoke against the defendants the presumption of title from possession. He had no interest in the chattel when the defendant converted it. He was not the original owner with an indefeasible ownership interest, and his title was correspondingly vulnerable. His only possible action could have been against the police for their detaining the tallow from him. However, they had a proper statutory authority for their actions so that issue could not be argued.

This vulnerability of relative titles in personal property must be contrasted with the rights of an owner with an indefeasible title, P1. An indefeasible owner who is out of possession of a chattel
has a right to possess which is enforceable against third parties generally. He is not confined to enforcing it only against third parties who wrongfully dispossess him of the chattel or who derive title through such a person. This is because his ownership and the right to possession which depends on it are indefeasible. The claimant is not simply presumed to be the owner from the fact of his previous possession. So if P2 stole the chattel from P1, and then


P3 stole it from P2, P1 could recover damages from P3 for the conversion of a chattel, even though P3 did not wrongfully dispossess P1. On similar facts, P2, a person with a purely possessory title, would have no action against P4, a person who stole the chattel from P3, who had in turn stolen it from P2. However, if the dictum in Field v. Sullivan is followed—and a possessory title can be enforced against recipients who derive title from the person who wrongfully dispossessed the claimant—then it might only be in the rare instances of successive thefts, as outlined above, that there would be any real difference between a claimant suing on a relative and an indefeasible ownership interest in a chattel.

The vulnerability of relative titles to personal property shows some similarity to the rules which applied to real property before the reforms of the early nineteenth and twentieth centuries. The original common law conception was that, once dispossessed by a squatter, the proprietor of land lost his fee simple estate. He ceased to have seisin. Only one person could be seised of land at a time, and it was against that person that the lord would exact any services due to him. Accordingly, the squatter, P2, was taken to be seised as a tenant in fee simple. The dispossessed proprietor, P1, was left with a mere right of entry or a right of action enforceable against P2. The right of entry was enforceable by P1's summarily ejecting P2, but the right of action could only be enforced by one of the real actions.

Important practical consequences followed from treating P1 as having lost the estate in the land. P1 could not alienate the land by the two effective methods of conveying a freehold unless he first recovered possession. Since P1 was out of possession, he could not enfeoff another person by giving livery of seisin, and it would be difficult for him to effect a lease and release to the transferee since he would not be in a position to put the nominal lessee in possession of the land, as this method of conveyancing required. Neither were P1's right of entry or right of action freely transferable since each was in the nature of a chose in action. Although the right of entry was heritable, it was incapable of being assigned inter vivos. It could not be devised by will before the


reforms of the Wills Act 1837. The position was summed up in an early treatise on conveyancing:

Things in action, and things of that nature, as causes of action, rights and titles of entry are not grantable over to strangers but in special cases. And therefore if a man have disseised me of my land or taken away my goods; I may not grant over this land, or these goods, until I have seisin
The statutory reforms of the early nineteenth and twentieth centuries must have caused this theory to change. The point was reached where the dispossessed proprietor of land could be treated as still having an estate in the way that the authors of Megarry and Wade describe. The incidents of his right of entry gradually became equivalent to those of an estate. First, the right of entry became as freely alienable as an estate in possession would have been. The Real Property Act 1845 allowed a person who held a right of entry to convey it by deed inter vivos, and the Wills Act 1837 allowed a right of entry to be devised by will. Secondly, the formal procedures for transferring an estate were gradually brought into line with those which had been established for transferring a right of entry. Section 2 of the Real Property Act 1845 made it possible to convey land by deed of grant, as an alternative to conveyance by livery of seisin. Section 51 of the Law of Property Act 1925 took this progression one stage further by abolishing livery of seisin. From then on land could only be conveyed by deed of grant. The grantor could pass his right to possession of the land without going through the previous formal step of allowing the transferee to enter on the land, something which a dispossessed proprietor would be in no position to do. Thirdly, it had long been established that dispossession of the person who had held a limited interest in the land did not accelerate remainder interests which were expectant on his estate. All in all, it became easier to conceive of a right of entry which conferred a general right to possession becoming equivalent to a fee simple estate still vested in a person out of possession.

A corresponding transition seems not to have happened with personal property, or at least not to the same extent. The Real Property Act 1845 did not extend to making rights of action in respect of personal property assignable by deed. It remains generally true that a conveyance of a chattel requires a delivery of possession. A dispossessed owner—even one with an indefeasible title—cannot make a gift of the chattel till he recovers possession, unless he does so by deed. Even then the most he could assign would be a cause of action to recover the chattel. Although choses in action have generally been assignable since the Judicature Act 1875, the rules prohibiting the maintenance of actions may nonetheless prevent the assignment of causes of action in tort, whether under the statute or in equity. With torts against property, rather than against the person, the policy objections in favour of prohibiting such assignments must be questionable, particularly since rights of entry to land have long been assignable. That said, the prohibition may well still stand. The combination of these circumstances probably discouraged the view that P2, the person who had acquired a possessory title to the chattel, had any continuing interest in it once he had been dispossessed.

V. Relativity of Equitable Proprietary Rights
(i) The Creation and Priority of Equitable Titles

The view advanced in this section is that relativity is as much a feature of equitable titles as it is of common law titles to tangible assets. In principle, it is possible to create an indefinite number of equivalent equitable titles to the same item of property. There is no relevant distinction for this
purpose between tangible and intangible property. It will be seen, however, that the different rules on joinder of parties applied in the Court of Chancery have meant that it would be uncommon for a person to succeed in a claim based on a merely relative equitable title to property. The theoretical possibility nonetheless exists.

The fundamentally similar approach to title disputes across common law and equity tends to be overlooked because relative titles have different causes at law and in equity. A relative legal title can arise simply from the claimant taking possession of the disputed asset but possession alone cannot generate an equitable title to an asset. A relative equitable title commonly arises from a derivative creation of rights made by the person who either has the legal interest or the equitable beneficial interest in an asset. The simplest instances are where a creditor makes an equitable assignment of a debt to a third person, or where the same asset becomes subject to the concurrent competing claims of the beneficiaries under different trusts. Each of these examples will be developed in this section.

Another reason why the similarity of approach can be overlooked is that equitable titles to assets often consist in claims which are substantively different in content from those which are most frequently met at common law. Common cases of legal titles involve claims to possession of tangible property. This is often not the case in equity. For example, with equitable titles arising from the multiple assignment of the same debt, the assignees' title does not give rise to any possessory claim. It would make no sense to speak of possession in the context of a debt. Rather, his title consists in his claim to compel the original assignor to join him in suing the debtor so as to secure a payment which discharges the debt. With titles arising under competing trusts of the same asset, each claimant's title consists in his right against the trustee to compel him to administer the asset according to the terms of the trust existing in his favour. The claimant's title under the trust may not necessarily give him any rights to possession of the trust asset—often it will not.

The example of multiple equitable titles generated by competing assignments of a debt is well illustrated by Dearle v. Hall, the decision which defined the priority rule applying to competing equitable assignments of a debt. Zachariah Brown was the life tenant under a trust declared under his father's will. In 1808 Brown assigned his claim to the trust income to Dearle, as security for an annuity which he had undertaken to pay to Dearle during the rest of Brown's life. In 1809 Brown made a second assignment of his claim to the trust income, this time to Sherring to secure a further annuity to Sherring. Three years later, Brown made a third assignment of his life interest, on this occasion selling it to Hall for a lump sum. By each assignment Brown became a trustee to the respective assignees of his equitable claim against the will trustees. Provided that each assignee joined Brown as a party to the action, he had the effective equitable claim against the will trustees to
compel them to pay him the income, to the exclusion of Brown. Later rationalisations of this analysis have it that the assignor held his primary claim on the debt on trust for each assignee, as if to imply that the assignments created multiple equitable titles to the debt enforceable by Brown against the will trustees. In explaining the relative ranking of those titles, Sir Thomas Plumer M.R. formulated the rule of priority which now applies generally to competing equitable assignments of a debt. He held that Hall had priority over the two previous assignees since he was the first to give notice to the debtors, the trustees of the will. He held that the usual first in time rule governing the priority of equitable interests in property did not apply to competing equitable assignments of a debt.

The Master of the Rolls justified the priority rule based on notice by saying the equitable title of the assignee was not complete until he had given notice to the debtor of the assignment. This explanation of the outcome has since been rejected. In Ward v. Duncombe Lord MacNaughton explained that the assignee's title was complete regardless of whether he had given notice to the debtor. The giving of notice was relevant in that it secured the priority of one assignee's claim over the claims of the others, and ensured that the debtor would get a good discharge from the assignee so that he could not be sued again by the assignor.

If it had been impossible to create relative titles in equity, then there could have been only one result in Dearle v. Hall: whichever assignee was first to get a complete equitable title to the debt would have had priority. Any later assignment would have been void since the entire claim against the debtor would already have vested in the first assignee. Hall could not have had priority because he was only the third assignee to get a complete title. As it is, however, the outcome of the case supposes that the title of each assignee conferred a valid equitable claim to compel payment of the same debt, any one of which could have been enforced against the debtor before notice was given to him. Once Hall gave notice, his title became the stronger in any action to which he and the debtor were parties. His title would be stronger against the debtor even if he were sued by another assignee. The debtor could no longer procure an effective discharge, binding on Hall, from any of the other assignees.

It is true that Dearle v. Hall is generally considered as a case on equitable priorities. As has been explained, however, this is perfectly compatible with its also being an illustration of the relativity of equitable titles. The principle of relativity allowed the creation of competing equitable titles to the debt, the comparative strength of which was then determined by the priority rule based on giving notice. Usually, the relative strength of competing titles depends on a first in time priority rule. This is generally true of competing legal titles to land and chattels but there is no logical necessity for this rule to apply.

At first sight, the result in Dearle v. Hall seems an obvious breach of the rule nemo dat quod non habet. If the assignees' equitable claims derived from an intentional transfer of rights by the assignor, how could the assignor validly carve out of his primary claim against the debtor more than one competing claim for different assignees of the same debt? There is no corresponding problem at common law when a person acquires a possessory title to land or a chattel. The fee simple or ownership interest which he acquires is newly created from the fact of possession and
does not derive by grant from the paper owner. There can be no argument that the nemo dat rule has been breached.

The answer to this apparent problem follows from the way in which an assignment of a debt takes effect in equity. Each assignment effectively operates as the creation of a fresh equitable liability in the assignor to be joined as a party in an action against the debtor. In functional terms, the assignee's title to the debt consists in a claim against the assignor, a third party. In contrast, a legal title to tangible property consists primarily in a claim enforceable directly against the property itself. As a result, it is easier to conceive of the proprietor of a legal interest in tangible property as exhausting his interest in it when he makes a grant to another person. But since titles to a debt consist primarily in claims against a person not a thing, it is possible for the same assignor to create multiple valid claims against himself by a series of intentional assignments of the same debt.

Once this analysis of an assignment is understood, it is only a short step to explain the creation of relative titles by means of competing declarations of trust. In functional terms, the effect of creating equitable rights under a trust is to create a personal claim against the trustee, which is enforceable by the beneficiary, governing his management and disposition of the trust assets. The right is proprietary in the sense that the beneficiary can compel a third party to whom the trustee wrongfully transfers the trust asset to return it to the trustee, unless the third party's legal interest in the asset takes precedence according to the relevant rule of priority applying to property of that kind. While the beneficiary's claim does not subject a third party transferee to the full range of administrative and fiduciary duties owed by the original trustee, it can at least make him liable to restore the asset to the trustee who will then be bound to administer it according to the terms of the trust instrument. Treated therefore as a functional account of how trusts operate, Maitland's description of equitable property rights under trusts as arising from the enforcement of a personal claims against the holders of the trust asset remains fundamentally true, though a refinement needs be added to explain the different content of those personal claims against the original trustee or a wrongful third party transferee.

If this functional understanding of interests under trusts is overlooked, it is easy to draw a mistaken conclusion that relative titles cannot be created under trusts. The error is to treat the beneficiary's interest under the trust as a reified entity and then to infer from that that once the interest has been created in one person, it cannot be created again in another. It may be thought that the creation of the interest in one person must exhaust the trustee's capacity to create it a second time. But properly understood as claims against the trustee in respect of his management of the trust asset, there is no logical reason why equity cannot allow the creation of relative titles to the same asset by a series of derivative transactions. The analysis is similar to that which applies to the case of multiple assignments of a debt. A person can validly create any number of claims against himself for the benefit of different people. It is no objection to the validity of each claim that they cannot all be satisfied out of his present or future resources. It is a common experience for a person of precarious means to keep incurring more debts even when his assets
available to meet them are inadequate. The debtor does not exhaust his capacity to create more valid claims against himself simply because he no longer has enough money to meet them.

So it is with claims under a trust. Nothing prevents the trustee from creating a series of equivalent claims against himself to the beneficial enjoyment of the same asset. Viewed in functional terms as a bilateral relation between the trustee and each beneficiary, the claim is valid. The claims of beneficiaries of subsequent declarations of trust are as valid as those created earlier. The relevant rules of priority applying to equitable interests then determine the relative ranking of the beneficiaries' claims among themselves and, accordingly, the relative strength of each beneficiary's title to the trust asset. In the case of competing equitable interests in the same asset, the rule is generally that the beneficiary whose title is created earlier in time takes priority over later equitable titles.92

To illustrate the theory, we may suppose a case of a settlor who made successive and inconsistent declarations of himself as a trustee.93 He first declares a bare trust for a beneficiary, P1, who takes the entire beneficial and equitable title to the asset. If the settlor/trustee then declares another bare trust of the same asset in favour of P2, and again in favour of P3, then P1's interest would rank ahead of that of the others. But in a dispute between P2 and P3, the settlor/trustee could still be taken to have created a valid beneficial interest in P2 even though he had previously declared a trust for another person who was not a party to the action. But P3 could not plead the effect of the rule of first in time priority as between P1 and P2, in defence to P2's claim to priority over him. In principle, this would be irrelevant in a dispute between P2 and P3. If P3 could successfully argue that the priority rule operated absolutely so as to defeat P2's claim against him, then he would effectively be setting up a defence of jus tertii. Subject to the different Chancery rules of joinder which are discussed below and which would commonly require P2 to join P1 as a party to his action,94 a defendant in an equitable action should only be allowed to succeed by relying on the strength of his own title, not by pointing out the weakness of the claimant's title.

We can take the point further to illustrate how, in principle, a relative equitable title could be enforced against third parties. Suppose again a case where a settlor/trustee makes successive declarations of a bare trust of the same asset for three different beneficiaries. If the trustee wrongfully transferred the trust asset to a third person, any one of the beneficiaries would have a sufficient equitable title to recover it in specie by a proprietary claim, or to bring a personal claim for restitution of its value by an action for knowing receipt. Any one of them would have a personal claim against the trustee for any residual loss that resulted from the breach of trust. If P2 or P3 brought the action, neither the trustee nor the third person could defend himself by pointing to the relative weakness of their title as against P1. Again that would be to allow the defendant to succeed by arguing a jus tertii. The effect of the first in time priority rule would be that P1's title to the asset would be stronger relative to that of P2 or P3, so if all three were joined as parties to the action, P1 could take the entire benefit of the action to the exclusion of P2 and P3. Moreover,
if P1 discovered that the trustee had paid any trust money to P2 or P3, he could treat that as a breach of his trust. He could get restitution of the money from P2 and P3 by a personal or proprietary claim. From P1's perspective, they would be as much strangers to his trust as any third person to whom the trustee might have paid the money.

The same analysis would be true in a dispute between P2 and P3 or between P3 and a third party. Either way, the claimant with the stronger title would have a claim for restitution of his trust money from a recipient with a weaker title or a personal claim against the trustee for losses resulting from the breach. The defendant could not avoid liability by showing that another person might have had a better equitable title than the claimant to some or all of the money.

El Ajou v. Dollar Land Holdings Plc. (No. 2) is a rare reported instance of such reasoning at work. The main question in the case was the amount of the defendant's liability to the plaintiff for knowing receipt of a mixed fund of misapplied money amounting to £2.3 million. The fund was subject to charges for repayment of much larger sums which had been misappropriated from the plaintiff and many other unidentified victims of a fraudulent share selling scheme. The relative proportions of the plaintiff's and other victims' charges was 7:3. Robert Walker J. held that the defendant was liable to the plaintiff for the full amount received, not just 70% of it. The defendant could not plead what was in effect the jus tertii of the other fraud victims to reduce his liability to 70% of the money received. It was held that the plaintiff could succeed in full upon his partial equitable title to the money received. His quantifiable defect in title as regards the other victims of the fraud was irrelevant to its enforcement against the defendant.

A case which reaches a similar result but for differently stated reasons is Bracken Partners Ltd. v. Gutteridge. An argument about the enforcement of relative equitable titles was expressly put in the case though not in fact relied upon by the Court of Appeal. Gutteridge was the director of, and controlling influence behind, three related companies which can conveniently be called P1, P2 and P3. In breach of fiduciary duty, he transferred money from P1 to P2. From P2 he transferred it to P3 before finally paying it to his wife, Ms. Smalley, who applied it towards the purchase of a house. Significantly for present purposes, each of the transfers from P1, P2 and P3 represented a misapplication from the companies from which the money was taken. Each recipient became a constructive trustee to the company one link before it in the chain of misapplications.

In an action brought by P2 against Ms. Smalley, she admitted that she held the house on constructive trust because it represented the traceable proceeds of the money originally misapplied from P1. However, she disputed P2's equitable title to sue, arguing that P2 had no equitable title at all to the money: title remained throughout in P1 as the victim of the original misapplication. The Court found an easy solution to the problem. Since P2 was a constructive trustee to P1, it could sue Ms. Smalley on P1's behalf, leaving it to account for the proceeds of its action to P1. The case would simply be treated as one where a trustee exercised equitable rights of action on behalf of its beneficiaries. In this way, the Court did not need to consider whether
P2 could have successfully sued Ms. Smalley by relying on its own equitable title arising from the misapplication from itself to P3. It is consistent with the argument in this paper that this should have been possible. Ms. Smalley could not have defeated P2’s claim against her by pointing to P1’s superior equitable title. That would have allowed her to succeed on unmeritorious grounds by arguing the jus tertii. P2 should have been free to sue on its own equitable title, leaving it liable to an accounting action by P1 in which P1 could have enforced its superior title.

(i) Joinder of Parties in Equity

Whatever the position in theory, the historic rules on joinder of parties made it rare that a claimant could enforce a merely relative equitable title to an asset. This probably explains why instances of relativity of title seem so obscure in equity. The outcome in El Ajou v. Dollar Land Holdings Plc. (No. 2) was atypical: the other victims of the fraud who might have claimed a competing title to the money were not joined as parties and there seemed to be no realistic possibility of their being identified and joined. Typically, this is not the case.

It had long been a strict rule of the Court of Chancery that all people who had a material interest in the subject of the suit, however numerous, had to be joined as parties. If the plaintiff failed to do so, the defendant could plead a demurrer for want of parties. The court sought to ensure that it would bind all people with an interest in the subject of the suit by joining them as parties. As Lord Redesdale explained, once they were joined, the court could “do complete justice by deciding upon and settling the rights of all persons interested”. It could “make the performance of the court order perfectly safe for those who were compelled to obey it, and prevent future litigation” as would have happened if the same issue were to be raised later by another interested person who had not been joined as a party.

As a consequence, it was far less likely that a claimant with a merely relative equitable title, P2, could successfully recover against a defendant, P3, in cases where it was known that a third person, P1, had a stronger equitable title to the disputed asset. Unlike the general rule at common law, P3 would be permitted to raise P1’s jus tertii in the form of a demurrer for want of parties. But he could not raise P1’s better title to avoid liability altogether. The court would require P2 to join P1. It could then determine that P1’s title was stronger than P2’s and allow him to recover against P3 to the exclusion of P2. This outcome would not mean that P1’s title was guaranteed to be the best, but it would at least mean that P2 would be denied the opportunity of enforcing a title which was known to be relative and when the claimant with the better title was available to be joined as a party. In this way, it was more likely that the court could reach a conclusive determination of the competing claims to the disputed asset. Since the trustee would have to be joined as a party to any dispute between the competing beneficiaries, it would be all the more likely that the defendant would discover and join a rival claimant. A claimant might only succeed by relying on
a relative title in the rare instances where the person with the better title was unknown or where it was not practicable to join him as a party.\textsuperscript{100}

The historic approach of equity to the enforcement of a relative title would have been similar to the modern rule under the \textit{Torts (Interference with Goods) Act 1977} about pleading a \textit{jus tertii} in actions for conversion or trespass. As has been seen, a defendant in such an action is now authorised to show that a third party has a better right to the disputed goods than the claimant.\textsuperscript{101} The claimant is generally required to identify any person whom he knows claims an interest in the goods, and the defendant may apply for directions from the court as to whether any person should be joined as a party with a view to establishing whether he has a better right than the claimant.\textsuperscript{102} A claimant whose title is known to be only relative is unlikely to prevail in his action against the defendant.

By the middle of the nineteenth century, however, the strict Chancery rules on joinder were relaxed. Section 51 of an 1852 statute,\textsuperscript{103} enacted to amend Chancery practice and procedure, provided that it was lawful for the Court of Chancery to adjudicate on questions arising between parties notwithstanding that they might be only some of the parties interested in the disputed property, without making the other people interested in the property parties to the suit. This rule continued to hold even after 1875 when the jurisdiction of the Court of Chancery was absorbed into that of the newly constituted Supreme Court.\textsuperscript{104}

But this relaxation would probably not have made much practical difference to the enforcement of relative titles in equity. The defendant would be liable to the plaintiff unless he joined the person with a better title.\textsuperscript{105} It was clearly advantageous for him to do so in any case where he could identify the person with the stronger title: he could thereby avoid any chance of future liability to that person. So, for instance, a debtor who paid the second assignee, P2, would not get a good discharge as regards the first assignee, P1, who had ensured his priority by giving notice to the debtor.\textsuperscript{106} Likewise, in a case of multiple trusts over the same asset where the first in time priority rule applied, the trustee would not discharge his liability to the first beneficiary, P1, if he paid the second beneficiary, P2. The defendant, therefore, had a strong incentive to discover and join the party with the better title. This would not be difficult. With multiple assignments of the same debt, the rule in \textit{Dearle} v. \textit{Hall} would mean that the debtor would have received notice of assignment from the assignee with the best title. With multiple declarations of a bare trust, the settlor/trustee should have been in a position to know if he had made any earlier declarations of trust which took priority over P2’s claim.

In substance, therefore, it would be rare that a person would succeed in enforcing an equitable claim to an asset based upon a merely relative title. The defendant could typically defeat the claim by joining a third party with a stronger title, so rendering the plaintiff’s title unenforceable.

\textbf{VI. Relative Legal Titles to Intangible Property}
In Dearle v. Hall each assignee had a relative equitable title to the payment of the debt. The outcome raises an interesting parallel question: at common law is it possible to create relative titles to intangible property? In principle, it seems that this is not possible, at least where the title arises from a right of ownership. There can be only one valid right of legal ownership to a chose in action. However, some slim authority exists to suggest that multiple legal titles can be created to a chose in action where the chose represents the traceable proceeds of an unauthorised exchange of an original asset belonging to the claimant.

This general conclusion can be demonstrated by showing how neither of the two ways of creating relative titles applies to the legal ownership of a chose in action. First, the presumption that possession of property is prima facie evidence of title can have only a limited application to choses in action. A pure intangible—that is, a chose in action which is not represented by a tangible document—is incapable of being possessed. This method of generating a relative title in tangible assets simply cannot apply to such a chose in action. The title is in the person with the right to sue on the claim. The right is necessarily unitary.

The presumption of title from possession does, however, have some limited relevance when the chose in action is a documentary intangible, such as a share warrant transferable by simple delivery, a bill of exchange payable to bearer, or a bearer bond. If, for instance, P1, the original owner of a share warrant, were to have the warrant stolen from him by P2, then P2's possession of the warrant would confer on him a relative title to the document as against any third party, P3, who tried to interfere with his possession. As between P1 and P2, however, P1's subsisting legal ownership would give him the stronger title. P1's ownership of the warrant document would continue until the person in possession negotiated it to a bona fide purchaser without notice of the possessor's defect in title. The basic distinction is between actions where the claimant depends on possession of the tangible document and those where he is suing on the intangible claim embodied in the document.

The analysis is different, however, when the warrant is viewed in its character as a chose in action enforceable against the company. In issuing the share warrant, the company would undertake to register the bearer as a member of the company if he surrendered the warrant to the company for cancellation. The benefit of its promise, and correspondingly the legal ownership of the chose, is in this way freely transferable. From the company's point of view, the right to apply for registration could be enforced by only one person, the bearer for the time being. Possession is an exclusive concept so the bearer's title to the warrant, as a chose in action, is unitary and indivisible. If P2 were to have himself registered as a member of the company, then P1 could have no claim against the company. His only recourse would be against P2 for interfering with his title to the warrant in its character as a chattel.

Returning to pure intangibles, what slim authority there is on the point suggests that it is also not possible to create relative legal titles in a chose in action by a series of derivative transfers of the
legal right to sue on it. It seems that multiple legal assignments of a chose in action under section 136(1) of the Law of Property Act 1925 are impossible. That section provides that on completion of an absolute assignment pursuant to its provisions, the right to sue on the debt passes to the assignee. The assignee may give a good discharge of the debt without the concurrence of the assignor. In this respect, statutory assignments differ from equitable assignments of debts, which, as have been seen, allow the creation of multiple equitable titles to the same debt. The key to the difference is that the assignee's equitable title to the debt is not enforceable directly against the debtor. He must first join the assignor as a party to his action. Strictly, his title to the debt consists in a claim against the assignor to compel him to sue the debtor on the assignee's behalf. As has been seen, multiple claims against the same assignor are perfectly possible.

The only authority directly on point is the sparsely reported decision of Denman J. in Cronk v. McManus. Cavell, a mortgagee of land, made a legal assignment of the mortgage debt to Gardner. Cavell then purported to make a second assignment of the debt to the plaintiff, Cronk, under section 25(6) of the Judicature Act 1873, the predecessor of section 136. The defendant, the debtor under the original mortgage, resisted the plaintiff’s claim for payment of the debt. Denman J. held that the defendant should succeed: “[I]t is impossible to say that the plaintiff is the assignee of a debt or other legal chose in action within the provision of the Judicature Act”. Denman J.’s reasoning assumes that the first assignment of the legal interest in the debt exhausted the assignor's interest. Any later assignment would have been absolutely void at law. Consequently, a debtor who paid the purported second assignee of the debt could not get an effective discharge as against the first assignee to whom he actually owed the debt, since he would not be paying pursuant to any valid legal obligation. With legal interests in intangibles, it seems therefore that the nemo dat rule operates absolutely, just as it does with tangible property.

Claims to property enforced after the process of tracing may illustrate the rare instance where the common law allows the creation of multiple legal titles to the same chose in action. For example, a credit balance in a bank account held in the name of P2 may represent the traceable proceeds of money which has been wrongfully misapplied from P1. P2 holds the chose in action subject to the superior title of P1. P1's title is inchoate in the sense that it does not confer the present right to full ownership on P1. It would, however, be sufficient to allow him to have a declaration requiring the bank to pay the funds to him. If P2 were to transfer the money to a third party, P1's title would be sufficient for him to enforce an action against the recipient for money had and received. Apart from this instance, however, it seems that the common law does not allow the creation of multiple titles to intangible property arising from interests in the property which have the same incidents of enjoyment. All the more so, it does not allow such titles to be created by a derivative creation of a proprietary interest, as is possible in equity.

VII. Conclusion

A title to an asset is essentially a claim to enjoy the substantive incidents of a certain kind of proprietary interest in it. The relative validity of those claims depends on the rule of priority.
which applies to proprietary interests in the asset and the procedural rules governing the joinder of parties.

It follows from these observations that although relativity of title is best known in cases of adverse possession of land, it applies far more widely across the law of property. Common law relative titles can be created in chattels, just as they can be in real property. They are, however, more vulnerable to extinction once the claimant loses possession of the chattel. The reasons for this difference are


historical: certain statutory reforms which allowed rights of entry to land to be alienated had no equivalent applying to personal property. Relative titles can be created in equity. They can even be created by a series of derivative grants out of the same asset, something which the different basis of property holding at common law prevents. But the different joinder rules which applied in equity have made it unlikely that a claimant would be successful in enforcing a merely equitable relative title to an asset. The relativity principle has no part to play in determining competing legal claims to choses in action, except where the chose is embodied in a documentary intangible or in those rare instances where the title arises from an unauthorised substitution of an original asset. In general, the relativity principle illustrates the pragmatic interaction in common law reasoning between the rules of evidence and procedure, and the substantive principles governing the creation and transfer of property interests.