

SQE2 PROPERTY LITIGATION

Comprehensive Study Guide

CHAPTER 1 INTRODUCTION TO PROPERTY LITIGATION

Definition & Scope

Fundamental
Principles

Principal Categories

Statutory Framework

INTRODUCTION

Property litigation sits at the heart of civil legal practice. Whether you are a solicitor acting for a landlord seeking to recover possession of a commercial unit, a homeowner defending their right to use a long-established footpath, or a developer asserting title to a disputed strip of land, the principles governing property disputes are the same: you must identify a recognised property right, establish its scope, and vindicate it through the correct legal process.

This chapter is your foundation. Before you can navigate the technical rules governing possession claims, boundary disputes, or landlord and tenant proceedings, you must first understand what property litigation is, why it is distinctive, and how the law organises and prioritises competing claims to land. This chapter introduces the definition and scope of property litigation, explains the fundamental distinction between legal and equitable interests in land, surveys the principal categories of property dispute, and sets out the key statutory framework that governs the field. Each of these topics is essential for the Solicitors Qualifying Examination (SQE) and forms the conceptual bedrock on which all subsequent chapters of this guide are built.

A student approaching this subject without any prior knowledge of property law or civil procedure should not be alarmed by the apparent complexity. The law of property has developed over centuries, and its technicality reflects the importance of land as an economic and social resource. However, once you understand the underlying logic — that property rights are about who has the strongest claim to use or control land — the rules become much more accessible. This chapter will explain every concept clearly,

step by step, so that by the end you will have a firm grounding in the introductory principles of property litigation.

1.1 Definition and Scope of Property Litigation

Property litigation, at its simplest, means legal disputes about land. In English law, the word 'property' used in this context almost always refers to real property — that is, land and everything attached to it, including buildings, structures, and fixtures. The subject also extends to rights that exist in connection with land, such as rights to cross someone else's land (known as easements), rights to benefit from obligations affecting neighbouring land (known as the benefit of restrictive covenants), and rights arising from the occupation of land under a lease.

What distinguishes property litigation from ordinary commercial or personal disputes is that the rights being asserted, defended, or challenged are proprietary in nature. This is a fundamental legal concept, and it is worth pausing to understand it clearly. A proprietary right is one that attaches to land itself, not merely to the person who happened to hold it at a given moment. This means that proprietary rights can, in principle, bind future owners and occupiers of the land, even strangers who were not party to the original transaction or arrangement that created the right. This quality of potentially binding third parties is the defining characteristic of proprietary rights, and it explains why property disputes can become complicated — they do not end when ownership changes hands.

The scope of property litigation is deliberately broad. It covers disputes between private individuals, such as neighbours arguing about the precise location of a garden fence, as well as large-scale commercial disputes, such as arguments between property developers and neighbouring landowners about the enforceability of a restrictive covenant that prevents development of a site. It also encompasses disputes arising from the landlord and tenant relationship — which may involve statutory protections for residential tenants, obligations to repair and maintain premises, the right to renew a commercial lease, or the landlord's entitlement to forfeit a lease upon breach of covenant. Rights of way, whether public footpaths or private rights to cross land, are another fertile source of property litigation.

The solicitor practising in property litigation must therefore be comfortable with a wide range of both substantive law (the rules that create and define property rights) and procedural law (the rules that govern how those rights are asserted in court). The overarching procedural framework is provided by the Civil Procedure Rules 1998 (CPR), which govern virtually all civil litigation in England and Wales. Within the CPR, certain provisions are specifically tailored to property disputes — most importantly CPR Part 55, which provides a dedicated procedure for possession claims.

KEY TERM: Real Property

In English law, 'real property' means land and everything permanently attached to it, including buildings, fixtures, and rights appurtenant to land such as easements. This is distinct from 'personal property', which covers moveable things (sometimes called 'chattels'). The distinction matters in property litigation because real property is subject to a distinct body of law governing ownership, transfer, and dispute resolution.

KEY TERM: Fixtures

A fixture is an object that has become so permanently attached to land that it is treated in law as part of the land itself. The classic test (from *Holland v Hodgson* [1872] LR 7 CP 328) asks: (1) the degree of annexation — how firmly attached is the object? and (2) the purpose of annexation — was the object attached to improve the land permanently, or merely for temporary use? If something is a fixture, it passes with the land on a sale and cannot be removed by the outgoing owner without express agreement. This is often relevant in landlord and tenant disputes.

In practical terms, property litigation requires the solicitor to integrate knowledge from several distinct areas of law simultaneously. Substantive property law determines whether a right exists and what its content is. The law of trusts and equity determines whether certain rights — particularly beneficial interests in land arising from contributions to a purchase price or from promises acted upon — are enforceable. The law of contract governs the terms of leases and agreements affecting land. Statutory regimes such as the Landlord and Tenant Act 1954, the Housing Acts of 1985 and 1988, and the Land Registration Act 2002 overlay and sometimes override the common law framework. And throughout, the Civil Procedure Rules govern how any dispute is managed and resolved in court.

EXAM TIP

For the SQE, you need to think of property litigation as requiring two separate skill sets working together: (1) substantive property law knowledge — understanding what rights exist and who holds them — and (2) procedural knowledge — understanding how to assert or defend those rights in court using the CPR. Examiners will test both. A common error is to identify the correct legal position but then apply the wrong procedure, or to know the procedure but misidentify whose rights take priority.

1.2 Fundamental Principles Underlying Property Disputes

Before examining individual categories of property dispute, it is essential to understand the fundamental principles that underlie all property litigation. These principles operate as the background rules against which every individual dispute is resolved. They determine whose rights are recognised by the law, in what order competing rights are ranked, and whether a particular right can be asserted against a third party.

1.2.1 The Concept of Proprietary Interest

The concept of a proprietary interest is the single most important foundational idea in property litigation. To understand it, it is helpful to contrast it with a personal right. Imagine a person, Alice, who owns a shop and grants a licence to Bob to use the car park behind the shop. A licence of this kind is a personal permission — it creates a contractual right between Alice and Bob, but it does not give Bob any property right in the car park itself. If Alice sells the shop to Carol, Bob cannot enforce his licence against Carol. The licence is personal to Alice and Bob and does not survive a change of ownership.

Now imagine instead that Alice grants Bob a formal right of way — an easement — over the car park, properly created and registered at HM Land Registry. This is a proprietary interest. It attaches to the land itself, not merely to Alice personally. If Alice sells the shop to Carol, the easement remains binding. Bob can assert his right of way against Carol, even though Carol had nothing to do with the original grant. This is the crucial distinction: proprietary interests survive changes in ownership; personal rights do not.

In property litigation, a claimant must always be able to point to a recognised proprietary interest as the foundation of their claim. They may be asserting that their freehold title is superior to the defendant's claim of adverse possession. They may be asserting that they hold an easement that the defendant is obstructing. They may be asserting a beneficial interest under a resulting or constructive trust. Whatever the nature of the claim, its validity depends on whether the law recognises the asserted interest as genuinely proprietary — capable of binding third parties and persisting through changes in ownership.

KEY TERM: Proprietary Interest

A right in or over land that is recognised by law as capable of binding third parties and surviving changes of ownership. Proprietary interests are contrasted with personal (or in personam) rights, which bind only the original parties to an agreement or relationship. Establishing a proprietary interest is a prerequisite for most forms of property litigation.

The courts have not always found it easy to determine whether a particular right is proprietary or merely personal. The classic authority on this question is *National Provincial Bank Ltd v Ainsworth* [1965] AC 1175, in which the House of Lords held that the deserted wife's equity — the right of a wife deserted by her husband to remain in the matrimonial home — was a mere personal right against the husband and could not bind a mortgagee bank that later took a legal charge over the property. Lord Wilberforce in that case set out the criteria for a right to be proprietary: it must be definable, identifiable by third parties, capable in its nature of assumption by third parties, and have some degree of permanence or stability.

This principle from *Ainsworth* continues to guide the courts. When a party claims an interest in land — whether as a beneficiary under a trust, a person who has been misled into spending money on improving land they were promised would be theirs, or a person who has occupied land under a long-standing

informal arrangement — the first question the court will ask is whether the claimed interest is genuinely proprietary in nature, or whether it sounds only in contract or personal obligation. If it is merely personal, then while the claimant may have a remedy in damages against the person who made the promise, they cannot assert their right against a new owner of the land.

IMPORTANT NOTE

A common examination error is to confuse a licence (personal permission to use land) with an easement or other proprietary right over land. A licence can be revoked; a properly created easement cannot. When advising a client, always ask: has the right been formally created (usually in writing and registered), or is it merely a permission that could be withdrawn at any time?

1.2.2 Legal and Equitable Interests

English property law divides proprietary interests into two great categories: legal interests and equitable interests. This distinction has deep historical roots — it arose from the parallel development, over many centuries, of the common law courts and the Court of Chancery (the court of equity) — but it remains of fundamental practical importance in modern property litigation.

Legal interests in land are those recognised by the common law as full property rights. They are created by statute or by common law, and when they are registered at HM Land Registry they are binding on the whole world. Section 1 of the Law of Property Act 1925 (LPA 1925) sets out the two legal estates that can exist in English law: the fee simple absolute in possession (freehold ownership, which is the closest thing in English law to outright ownership of land) and the term of years absolute (leasehold ownership, under which a person holds land for a fixed period under a lease). The same section also lists the legal interests capable of existing in land, including easements (rights over neighbouring land, such as rights of way), charges by way of legal mortgage (security interests over land), and certain other rights.

Equitable interests, by contrast, are interests that are recognised and protected by the rules of equity. They arise in a variety of circumstances. A beneficiary under a trust holds an equitable interest in the trust property. A person who has relied to their detriment on an assurance that they would be given an interest in land may acquire an equitable interest under the doctrine of proprietary estoppel. Where land is purchased in the names of two or more people but only one has contributed to the purchase price, the courts may impose a constructive or resulting trust, giving the contributing party an equitable beneficial interest. Equitable easements and equitable mortgages also exist, arising where the formality requirements for legal creation have not been satisfied but equity is prepared to treat the right as valid between the parties.

The critical distinction between legal and equitable interests lies in their behaviour when land is sold to a new owner. A legal interest, once registered, binds all purchasers — it does not matter whether the purchaser knew about the interest or not. An equitable interest, however, may be defeated by what equity

calls a 'bona fide purchaser of a legal estate for value without notice', sometimes referred to as 'equity's darling'. This is a purchaser who: (a) acquires a legal estate (not merely an equitable interest) in the land; (b) pays genuine value (money or money's worth); and (c) does so without actual, constructive, or imputed notice of the equitable interest. If all three elements are satisfied, the purchaser takes the land free of the equitable interest, and the holder of that interest loses their rights against the land (though they may retain a personal claim against the person who disposed of the land in breach of the equitable obligation).

Under the Land Registration Act 2002, the distinction between legal and equitable interests is modified in the context of registered land (which now covers the vast majority of land in England and Wales). In registered land, equitable interests can and should be protected by entry of a notice or restriction on the register of title. If this is done, the interest will bind any subsequent purchaser regardless of the doctrine of notice. However, certain equitable interests — known as 'overriding interests' — can bind even registered title without any entry on the register, because the law deems that a purchaser ought to be aware of them. The most important overriding interest in practice is the interest of a person who is in actual occupation of the land at the time of the transaction (LRA 2002, Schedule 3, paragraph 2). This provision protects, for example, a cohabitant who has a beneficial interest under a trust and is living in the property, even if their interest is not registered.

FIGURE 1.1 — THE SPECTRUM OF PROPERTY INTERESTS

STRONGEST			WEAKEST		
Legal Estate (Freehold)	Legal Estate (Leasehold)	Legal Interest (Easement etc.)	Equitable Interest (Trust)	Estoppel Right	Personal Right (Licence)
Binds the whole world — registered at Land Registry. Absolute ownership of the freehold estate.	May be defeated by bona fide purchaser for value without notice. Equity is more flexible but more vulnerable.				
Key Rule: The stronger the interest, the greater its ability to bind third parties and resist defeat in litigation.					

FIGURE 1.4 — LEGAL vs EQUITABLE INTERESTS: KEY DISTINCTIONS

Feature	LEGAL Interests	EQUITABLE Interests
How Created	By statute or common law — e.g. s.1 Law of Property Act 1925	By equity — e.g. trust, proprietary estoppel, constructive trust

Binding on Third Parties	Bind the whole world once registered — near absolute protection	May be defeated by bona fide purchaser of legal estate for value without notice (equity's darling)
Registration	Must be registered as legal charge or legal interest under LRA 2002	Protect by entry of notice or restriction on the register under LRA 2002, s.32 or s.40
Remedies Available	Common law remedies — damages, possession	Equitable remedies — injunction, specific performance, account of profits
Examples	Freehold estate, leasehold estate, legal easement, legal mortgage	Beneficial interest under trust, equitable easement, proprietary estoppel

EXAM TIP

In the SQE, questions about legal and equitable interests often appear in scenarios involving land purchased in one person's name where another person has contributed to the purchase price or mortgage payments. Always ask: (1) What interest does the contributor have? (Usually an equitable beneficial interest under a resulting or constructive trust.) (2) How can that interest be protected against a sale? (By entering a restriction on the register under LRA 2002 s.40.) (3) If the land has already been sold, can the interest bind the purchaser? (Only if the interest qualifies as an overriding interest — most importantly under LRA 2002, Sch.3, para.2, if the person was in actual occupation.)

1.3 Principal Categories of Property Dispute

Property disputes do not all look alike. The legal principles, procedural rules, and statutory frameworks applicable to a possession claim by a landlord against a residential tenant are entirely different from those governing a neighbour's claim to enforce a right of way, or a boundary dispute between two adjacent landowners. The first step in approaching any property dispute is therefore to categorise it correctly, since the category will determine the procedural path, the relevant statutory protections, and the remedies available.

The following sections introduce the five principal categories of property dispute most commonly encountered in practice and assessed in the SQE. Each category is explained at an introductory level here; subsequent chapters of this guide will treat each in depth.

FIGURE 1.2 — PRINCIPAL CATEGORIES OF PROPERTY DISPUTE

1	Possession Claims	Recovery of land from unauthorised occupants — CPR Part 55 applies
2	Boundary Disputes	Precise location of borders between neighbouring properties

3	Rights of Way	Existence, scope & enforcement of easements and public rights of way
4	Landlord & Tenant	Forfeiture, breach of covenant, rent disputes, and statutory protections
5	Nuisance & Trespass	Interference with enjoyment of land or unlawful entry onto land

1.3.1 Possession Claims

A possession claim is brought by a person entitled to possession of land against a person who is currently in occupation without sufficient legal right to be there. The claimant must establish that they hold a proprietary interest in the land — typically freehold title or a landlord's reversionary interest — that is superior to whatever right (if any) the occupant can assert.

Possession claims arise in a variety of situations. A landlord may wish to recover a property from a tenant whose lease has expired or been forfeited. A freehold owner may wish to evict a trespasser who has entered their land without permission. A landowner may seek to recover land from a squatter who has been in adverse possession. In each case, the procedural vehicle is CPR Part 55, which provides a specialised procedure designed to deal with such claims more quickly than ordinary civil proceedings.

The procedure under CPR Part 55 requires the claimant to file a claim form and a witness statement setting out the basis of the claim and the history of the occupation. The defendant has a right to file a defence. The court will then list the case for a hearing, usually within a short time frame. If the occupant is a trespasser with no arguable defence, the court will typically make an outright possession order. If the occupant is a former tenant or a person with some arguable equitable right, the court will consider the evidence more carefully and may make a suspended or postponed possession order rather than ordering immediate eviction.

Residential possession claims attract significant statutory protections for tenants. A landlord of an assured shorthold tenancy (the most common form of private residential tenancy) can only obtain possession through the court — self-help eviction (changing the locks without a court order, for example) constitutes the criminal offence of unlawful eviction under the Protection from Eviction Act 1977. The procedural requirements for residential possession claims, particularly since the Coronavirus Act 2020 and subsequent court reforms, are complex and must be followed precisely to avoid delay or dismissal of the claim.

FIGURE 1.5 — POSSESSION CLAIM: DECISION FLOWCHART (CPR PART 55)

STAGE 1	Is there an unauthorised occupant? (trespasser, holdover tenant, squatter?)
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▼	
STAGE 2	Does the claimant hold a superior proprietary interest (freehold, superior lease)?
▼	
STAGE 3	Is the claim for residential or commercial premises? Different statutory protections may apply.
▼	
STAGE 4	File CPR Part 55 claim form. Consider urgency — an interim possession order (IPO) may be sought for trespassers within 24–48 hours.
▼	
STAGE 5	Attend possession hearing. Court exercises discretion. Possession order may be outright, suspended, or postponed.
▼	
Note: Residential possession proceedings are subject to greater judicial scrutiny and statutory protections than commercial ones.	

1.3.2 Boundary Disputes

A boundary dispute arises when two neighbouring landowners disagree about the precise location of the legal boundary between their respective properties. These disputes can appear, on the surface, to be minor — a few centimetres of garden, a disputed fence line — but they are frequently highly contentious and expensive to resolve, partly because of the emotional significance of home and land ownership, and partly because the resolution requires expert evidence, detailed analysis of historical conveyancing documents, and often a site inspection.

The starting point in any boundary dispute is the title deeds and, for registered land, the title plan held at HM Land Registry. However, it is important to understand that Land Registry title plans are drawn from Ordnance Survey maps to a small scale and are not intended to show precise boundary positions. The red line on a Land Registry title plan indicates the general extent of the title, not the exact legal boundary. This principle — known as the 'general boundaries rule' — is confirmed by section 60 of the Land Registration Act 2002 and the Land Registration Rules 2003.

To determine the precise legal boundary, the court will examine the original conveyancing documentation, including old title deeds that predate Land Registration where available, plans attached to conveyances, and any written descriptions of the property's extent. The court may also consider physical features of the land — the position of walls, fences, hedges, and ditches — since these can provide evidence of where parties historically understood the boundary to lie. Expert evidence from a surveyor or a conveyancing expert is almost always required in a contested boundary dispute.

Boundary disputes also frequently give rise to claims of adverse possession — the argument that one party has used a disputed strip of land so extensively and exclusively over many years that they have acquired title to it by effluxion of time, regardless of what the paper title says. The law of adverse possession is now governed primarily by the Land Registration Act 2002 for registered land and the Limitation Act 1980 for unregistered land, and the two regimes are quite different. Chapter 4 of this guide deals with adverse possession in detail.

1.3.3 Rights of Way

A right of way is a right to pass over land belonging to another person. Rights of way fall into two principal categories: public rights of way, which are exercisable by any member of the public (and include public footpaths, bridleways, and byways), and private rights of way, which are easements — proprietary rights held by the owner or occupier of one parcel of land (the dominant tenement) to pass over another parcel (the servient tenement).

Disputes about rights of way are common and can take several forms. An easement holder may claim that the servient landowner has obstructed or interfered with the right of way — for example, by erecting a gate, blocking the path with vehicles, or physically altering the surface. Alternatively, the servient landowner may dispute that the right of way exists at all, arguing that it was never properly created, that it has been abandoned, or that the way in which the dominant owner is using the right exceeds what was granted. There may also be disputes about the scope of the right — for example, whether a right of way on foot also entitles the dominant owner to use the path with vehicles.

The creation of private easements follows specific legal rules. An easement may be expressly granted or reserved in a deed of conveyance. It may be implied into a transaction under various doctrines recognised by the courts, most importantly the rule in *Wheeldon v Burrows* (1879) LR 12 Ch D 31 (which can imply an easement over land retained by the grantor in favour of the part sold), and section 62 of the Law of Property Act 1925 (which can upgrade a precarious right enjoyed over the vendor's land before the sale into a full easement on completion). An easement may also arise by long user under the doctrine of prescription — specifically under the Prescription Act 1832, if the right has been enjoyed as of right, openly, and without interruption for twenty years.

Public rights of way are governed by different rules. They arise by dedication and acceptance — historically by the landowner's express or implied dedication of the path to public use, and the public's acceptance of it. The Highways Act 1980 now provides a statutory regime for public rights of way, and local highway authorities are responsible for maintaining definitive maps that show the location of public rights of way. Challenges to the existence or route of a public right of way are made through administrative processes (applications to modify the definitive map) as well as through civil litigation.

1.3.4 Landlord and Tenant Disputes

The landlord and tenant relationship is one of the most heavily litigated areas of property law. It arises wherever one party (the landlord) grants another party (the tenant) the right to occupy land or buildings for a fixed or periodic term, in exchange for rent. Landlord and tenant disputes encompass a very wide range of legal issues, and the applicable law differs significantly depending on whether the tenancy is residential (in which case statute provides extensive protections for tenants) or commercial (in which case the parties have greater freedom to agree their own terms, subject to important statutory overlay).

In the residential sector, the most common form of tenancy is the assured shorthold tenancy (AST) created under the Housing Act 1988. The AST regime gives residential tenants a right to remain in the property for the fixed term and protects them against arbitrary eviction, but it does allow the landlord to recover possession at the end of the term (using the section 21 'no fault' procedure) or during the term for specified grounds of fault (under section 8 of the Act). A landlord who fails to follow the statutory procedure — including requirements to protect the tenant's deposit in an approved scheme and to provide required information — may find that their section 21 notice is invalid.

Disputes about disrepair are another common feature of landlord and tenant litigation. Section 11 of the Landlord and Tenant Act 1985 implies a statutory covenant into short residential leases requiring the landlord to keep the structure and exterior of the dwelling in repair, and to keep the installations for the supply of utilities in repair and proper working order. Tenants can bring civil claims for breach of this implied covenant, seeking damages and, in appropriate cases, an order for specific performance requiring the landlord to carry out works. Local authority enforcement action under the Housing Act 2004 (using the Housing Health and Safety Rating System) may also be triggered.

In the commercial sector, tenants of business premises may be entitled to renew their leases under the statutory security of tenure regime provided by Part II of the Landlord and Tenant Act 1954 (LTA 1954). This Act gives a commercial tenant who has been in occupation for at least one month the right to remain in the premises at the end of the contractual term until either the parties agree a new lease or the court orders termination. The landlord can oppose renewal only on specified grounds set out in section 30(1) of the Act, which include persistent non-payment of rent (ground (b)), substantial breach of repairing covenants (ground (c)), the landlord's intention to demolish or reconstruct (ground (f)), and the landlord's intention to occupy the property themselves (ground (g)). Commercial lease renewal proceedings are a staple of property litigation practice.

EXAM TIP

For the SQE, be careful to distinguish the different statutory regimes applicable to different types of tenancy. The Housing Act 1988 governs private residential tenants (ASTs and assured tenancies). The Housing Act 1985 governs secure tenants in the social housing sector. The Landlord and Tenant Act

1954 governs business tenants entitled to renewal. The Rent Act 1977 applies to older protected tenancies. Applying the wrong regime in an examination answer is a serious error.

1.3.5 Nuisance and Trespass

The final principal category of property dispute to consider at this introductory stage is that of nuisance and trespass. These are long-established torts — civil wrongs actionable at common law — that protect a landowner's right to use and enjoy their land free from interference by others.

Private nuisance is the unlawful interference with a person's use or enjoyment of land, or with some right over, or in connection with, land. It is important to understand that not every annoyance or inconvenience suffered by a landowner will amount to a legal nuisance. The law requires a balancing exercise: the court must consider the nature of the locality, the duration and severity of the interference, whether the defendant's conduct is unreasonable given all the circumstances, and whether the claimant has suffered actual damage or interference with a recognised proprietary right. Classic examples of nuisance include excessive noise from a neighbouring property or business, flooding caused by inadequate drainage on the defendant's land, noxious smells from agricultural or industrial operations, and encroachment of tree roots or overhanging branches. The leading modern authority is *Cambridge Water Co v Eastern Counties Leather plc* [1994] 2 AC 264, in which the House of Lords confirmed that foreseeability of the type of damage is required in nuisance.

Trespass to land, by contrast, is the direct, intentional entry onto land in the possession of another without lawful justification. Unlike nuisance, trespass is actionable *per se* — the claimant does not need to prove that they have suffered any particular damage. Any unauthorised entry onto land constitutes a trespass, even if the trespasser believed they had a right to enter or even if no harm was caused. Trespass claims arise in various contexts in property litigation — for example, where a builder encroaches slightly onto a neighbouring property during construction works, where a neighbour builds a fence that straddles the boundary, or where someone enters land without a valid licence or easement. The usual remedy is an injunction to restrain future trespass, together with damages for any loss caused.

Both nuisance and trespass sit at the intersection of property law and the law of tort, and a solicitor advising on these claims must be comfortable with principles from both fields. The procedural vehicle for such claims is ordinarily Part 7 or Part 8 of the CPR (depending on whether there is a factual dispute), rather than the specialist CPR Part 55 procedure applicable to possession claims.

1.4 Key Statutory Framework

Property litigation does not take place in a legal vacuum. It is governed by an extensive and complex statutory framework, parts of which are centuries old and parts of which have been enacted or significantly revised in recent decades. For the SQE, you are expected to know the principal statutes, understand what each one governs, and be able to apply their provisions to factual scenarios. The following is an introduction to the key statutes; each will be explored in greater detail in the chapters that follow.

The Civil Procedure Rules 1998 (CPR) are the foundational procedural code for all civil litigation in England and Wales, including property litigation. The CPR were introduced following Lord Woolf's landmark review of the civil justice system, *Access to Justice* (1996), and came into force in April 1999. Their central aim is to give the court the ability to deal with cases justly and at proportionate cost — what the CPR call the 'overriding objective' (CPR rule 1.1). For property disputes, CPR Part 55 is of particular significance, providing a dedicated and expedited procedure for possession claims. The CPR also contains provisions on pre-action protocols, disclosure, evidence, and costs that apply to property proceedings.

The Law of Property Act 1925 (LPA 1925) is one of the foundational statutes of English property law. It was part of a major legislative reform of land law in 1925 that rationalised and simplified the rules governing the ownership and transfer of land. Its key provisions for property litigators include: section 1, which defines the legal estates and interests capable of existing in land; section 52, which requires dispositions of legal estates to be made by deed; section 53, which requires certain equitable interests to be evidenced in signed writing; section 62, which can pass ancillary rights with a conveyance of land; and the provisions governing restrictive covenants and their enforceability (sections 78 and 79).

The Land Registration Act 2002 (LRA 2002) is the principal statute governing the registration of title to land in England and Wales. Its stated aim was to create a system of land registration in which the register would be a complete and accurate record of the state of title to land, so that it would be possible to investigate title to land almost entirely online. The LRA 2002 governs how legal estates are registered, how interests over registered land are protected (by notice, restriction, or overriding interest status), and how adverse possession claims are made in relation to registered land. The adverse possession regime under Schedule 6 of the LRA 2002 is significantly different from — and generally less generous to potential squatters than — the older unregistered land regime under the Limitation Act 1980.

The Housing Act 1988 (HA 1988) is the primary statute governing private residential tenancies in England and Wales. It created the assured tenancy and the assured shorthold tenancy (AST) as the main vehicles for private residential lettings. The HA 1988 provides the statutory framework for possession — including the no-fault ground under section 21 (subject to recent reforms under the Renters (Reform) Bill, which

was progressing through Parliament at the time this guide was written) and the fault-based grounds under Schedule 2. Understanding the HA 1988 is essential for any solicitor advising on residential property management or possession proceedings.

The Housing Act 1985 (HA 1985) governs secure tenancies — that is, tenancies held by tenants of local authorities and certain other social landlords. Secure tenants have stronger security of tenure than assured shorthold tenants; they can only be evicted on specified statutory grounds, and many of those grounds require the court to be satisfied that it is reasonable to make the order. A solicitor advising a local authority landlord or a social housing tenant needs to be familiar with the HA 1985.

The Limitation Act 1980 (LA 1980) sets out the time limits within which civil claims must be brought. In the context of property litigation, the most important provisions are: section 15 (which provides a twelve-year limitation period for claims to recover land by a person with a legal estate in it, running from the date of adverse possession — this is the basis of the traditional squatter's title in unregistered land); section 5 (which provides a six-year limitation period for contract claims, including most claims for breach of a lease covenant); and section 2 (which provides a six-year limitation period for tort claims, including nuisance and trespass). Missing a limitation period is a fatal error in litigation — the claim will be statute-barred and the defendant will have an unanswerable defence.






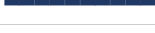
The Highways Act 1980 and the Rights of Way Act 1990 govern public rights of way. The Highways Act 1980 is the primary consolidating statute dealing with the creation, maintenance, and obstruction of public highways, including footpaths and bridleways. Local highway authorities have duties to assert and protect the rights of the public to use and enjoy public rights of way, and they have enforcement powers against landowners who obstruct them. The Rights of Way Act 1990 introduced the definitive map and statement regime, which provides a legal record of public rights of way; rights shown on the map are presumed to exist, though the map can be challenged and corrected through statutory procedures.

FIGURE 1.3 — KEY STATUTORY FRAMEWORK FOR PROPERTY LITIGATION

Statute	Area Governed	Key Significance for Litigators
Civil Procedure Rules 1998	Procedural Rules	CPR Part 55 governs possession claims; overriding objective applies to all property litigation
Law of Property Act 1925	Substantive Property Law	Governs interests in land, creation of easements, restrictive covenants, and s.53 formality requirements
Land Registration Act 2002	Registration of Title	Governs registered title, overriding interests, and the modern adverse possession regime under Schedule 6

Housing Act 1988	Private Residential Tenancies	Creates the assured tenancy and assured shorthold tenancy framework; governs s.21 and s.8 possession procedures
Housing Act 1985	Social/Public Sector Tenancies	Governs secure tenancies held by local authority tenants; different grounds for possession apply
Limitation Act 1980	Time Limits for Claims	12-year limitation for recovery of land; 6 years for most contract/tort claims; time bars are absolute
Highways Act 1980 & Rights of Way Act 1990	Public Rights of Way	Governs creation, maintenance, and obstruction of public footpaths, bridleways, and byways

FIGURE 1.6 — LIMITATION PERIODS AT A GLANCE (Limitation Act 1980)

Type of Claim	Period	Visual Bar
Recovery of land (adverse possession — unregistered)	12 yrs	
Recovery of land (adverse possession — registered, LRA 2002)	10 yrs	
Breach of contract (e.g. breach of covenant)	6 yrs	
Tort (e.g. nuisance, trespass)	6 yrs	
Breach of trust / equitable claim	6 yrs	
Mortgage action to recover land	12 yrs	

IMPORTANT NOTE

Statute law in property and landlord-tenant regulation changes frequently. At the time of writing, the Renters (Reform) Bill — which proposed to abolish section 21 'no fault' possession — was before Parliament. Candidates preparing for the SQE should always check for recent statutory amendments and consult current editions of practitioner texts and Law Society guidance.

CONCLUSION

This introductory chapter has established the conceptual and legal foundations necessary for the study of property litigation. Property litigation is a broad, technically demanding, and often high-value area of civil practice that requires the integration of substantive property law, equitable principles, statutory regulation, and procedural rules under the CPR. Its breadth — from small boundary disputes between neighbours to major commercial lease renewals and complex adverse possession claims — means that no single area of knowledge is sufficient; the successful property litigator must be fluent across multiple disciplines simultaneously.

The most important foundational concept introduced in this chapter is the idea of a proprietary interest: a recognised legal or equitable right in or over land that is capable of binding third parties. Every claim in

property litigation rests on the assertion or defence of a proprietary interest. Understanding whether a claimed interest is genuinely proprietary (as in the case of a properly created easement or a beneficial interest under a trust) or merely personal (as in the case of a bare licence) is critical, because this distinction determines whether the right survives a change of ownership and can be asserted against new parties.

The distinction between legal and equitable interests adds a further layer of complexity. Legal interests, once registered, bind the whole world. Equitable interests are more flexible but more vulnerable: they may be defeated by a bona fide purchaser of the legal estate for value without notice, unless they are protected by entry on the Land Register. In the modern registered land system under the Land Registration Act 2002, the priority and protection of interests in land is governed primarily by the register, though overriding interests — such as the rights of persons in actual occupation — can bind even registered title without any entry on the register.

The five principal categories of property dispute introduced in this chapter — possession claims, boundary disputes, rights of way, landlord and tenant disputes, and nuisance and trespass — each have their own procedural rules, statutory frameworks, and strategic considerations. Possession claims follow CPR Part 55, with additional statutory protections for residential tenants under the Housing Acts. Boundary disputes depend heavily on expert evidence and the interpretation of historical documents. Rights of way require analysis of the mode of creation and the scope of the right. Landlord and tenant disputes engage multiple statutory regimes depending on the type of tenancy. Nuisance and trespass claims blend property law with the law of tort.

Throughout the study of these topics, the key statutory texts — particularly the Law of Property Act 1925, the Land Registration Act 2002, the Housing Acts, and the Limitation Act 1980 — must be kept in view. These statutes do not merely provide procedural machinery; they define substantive rights and obligations, set time limits that can make or break a case, and provide the statutory grounds on which courts exercise their discretion.

As you progress through this guide, you will see that the principles introduced in this chapter recur again and again in more specific and technical contexts. Every topic in property litigation connects back to the fundamental question: what is the nature of the right being asserted, who holds the superior claim, and what is the correct procedural and legal mechanism for vindicating or defending that claim? Keep these questions in mind, and the complexity of property litigation will become manageable.

CHAPTER 1 — SUMMARY: KEY PRINCIPLES TO REMEMBER

1. Property litigation concerns proprietary rights — rights that can bind third parties and survive changes of ownership.
2. Legal interests bind the whole world once registered; equitable interests may be defeated by a bona fide purchaser for value without notice.
3. The five principal categories of property dispute are: possession claims, boundary disputes, rights of way, landlord and tenant, and nuisance/trespass.
4. Each category has its own procedural pathway — particularly CPR Part 55 for possession claims.
5. The key statutes — LPA 1925, LRA 2002, Housing Acts 1985 & 1988, and Limitation Act 1980 — must be known with precision.
6. Always check whether a claimed right is truly proprietary (binding on third parties) or merely personal (binding only the original parties).