



January 2026

WINNING BOUNDARY DISPUTES: SOME THOUGHTS ON LAW, EVIDENCE & STRATEGY

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INTRODUCTION

Boundary disputes remain one of the most persistent and contentious categories of property litigation. They often generate litigation that is lengthy, emotionally charged, and disproportionately expensive. On the other hand, the land concerned can often be very valuable, form a ransom strip or enable development of a lucrative kind.

For practitioners, these disputes present a unique challenge: they combine legal and evidential complexity together with human intransigence. Success frequently depends not only on knowing the correct legal principles but also on the careful assembly and deployment of evidence, the management of expert input, and the disciplined identification of the real issues in dispute.

This article examines boundary disputes from a practitioner's perspective. It draws on established authority and practical experience to identify the factors that most commonly determine outcomes.

THE LEGAL BOUNDARY AND PHYSICAL FEATURES

A recurring source of misunderstanding in boundary disputes is the assumption that physical features define legal boundaries. Clients frequently present with the belief that a fence, hedge, or wall conclusively marks the extent of ownership. Practitioners must address this misconception at an early stage.

In law, the boundary is the impossibly thin line defining the extent of the demise. The court's first task is to ascertain the position of the legal boundary by identifying, objectively, the intention of the parties at the time the land was first divided, expressed in the words of the dividing conveyance. There is a body of caselaw that deals with how to approach this task of contractual interpretation depending on the terms of such a conveyance.

FINDING THE RIGHT DOCUMENTS

The starting point in any boundary dispute is the documentary title. Conveyances, transfers, and their accompanying plans form the evidential foundation upon which the paper-title case is built. The practitioner's task is to construe these documents consistently with the caselaw. In a land contract, the relevant background includes (perhaps most importantly) the topographical condition of the land at the time that the contract was made. The jurisprudence about how to treat a plan attached to the conveyance, especially those marked "for identification purposes only" needs to be considered carefully. There may be other sources of admissible extrinsic evidence but some matters will not be admissible.

The general boundaries rule provides that registered title plans indicate only the general position of boundaries unless a determined boundary has been established. Practitioners should be alert to the risk of over-reliance on Land Registry plans and should explain clearly to clients why registration with a general boundary does not resolve boundary uncertainty. Many boundary disputes have been caused by people who think that the Land Registry plans are gospel.

Plans to conveyances must be treated with caution. Many plans were never intended to be definitive. They may not be drawn to scale, may omit features, or may have suffered distortion through reproduction.

EXPERT EVIDENCE

Expert evidence is frequently decisive in boundary disputes. Boundary surveyors play a central role, interpreting historical documentation, analysing physical features, and explaining technical matters to the court. Sometimes an expert in aerial photography can prove a useful source of evidence. The quality of expert evidence often determines the outcome of the case.

From a practitioner's perspective, the selection and instruction of experts is critical. An effective expert report is balanced and well-reasoned without being overly technical. It acknowledges uncertainties and alternative interpretations rather than dismissing them out of hand. Overly partisan reports risk undermining the expert's credibility and, by extension, the client's case.

Experts owe their primary duty to the court. Practitioners must ensure that this duty is understood and respected. Clear instructions, focused on the real issues in dispute, improve the utility of expert evidence and reduce the risk of unnecessary expense.

WITNESS EVIDENCE

Witness evidence in boundary disputes is often problematic. Claims frequently depend on recollections of events that occurred many years earlier. Memory is inherently fallible and easily influenced by current disputes. Courts sometimes approach such evidence with caution, particularly where it is unsupported by documentation, maps or aerial photos.

Independent witnesses, such as former owners or neighbours without a current interest in the dispute, can be particularly persuasive. Their evidence may assist the court in understanding how the boundary was historically treated or understood.

IDENTIFYING THE ISSUES AND POTENTIAL ARGUMENTS

One of the most common failures in boundary litigation is the failure to identify the real issue at an early stage. Boundary disputes may involve competing claims based on paper title, adverse possession, proprietary estoppel, or boundary agreements. Each legal basis requires different evidence and argument.

Practitioners should resist the temptation to pursue every conceivable argument. A focused case, built around the strongest available basis, is more persuasive and more cost-effective.

MEDIATION

Alternative dispute resolution is particularly well suited to boundary disputes. Mediation allows parties to reach pragmatic solutions that courts cannot impose. It is effectively compulsory for all but those litigants who can afford to forgo the possibility of costs recovery. Finding the right mediator is important. Mediations should always be held at or close to the land for obvious reasons.

COURT OR TRIBUNAL

Boundary disputes may be heard in the County Court, the First-tier Tribunal (Property Chamber), or, in complex cases, the High Court. Each forum offers different advantages. The tribunal provides a guarantee of a specialist Judge while the courts offer a broader range of remedies (e.g. declarations, damages and remedies). Choice of forum should be informed by the nature of the dispute, the relief sought, and the client's objectives.

CONCLUSION

Boundary disputes were mentioned in the Bible (Deuteronomy 27:17 “Cursed be anyone who moves his neighbour’s landmark”) and are unlikely to be going away any time soon. Bringing such claims is always a risk, but yet the law should be predictable and applied consistently. Early historical investigation of the land and property is crucial. Don’t rush in before the facts are known. Practitioners can learn how to manage risks and reduce them as much as possible for clients involved, for whatever reason, in this form of litigation.



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