PUMP COURT
CHAMBERS

Possession claims against those left in occupation, in particular after the death of an owner

Simon Lane
(updated from an earlier talk given in 2021)

Dealing with the property

The executor's problem

Mum has died. Your brother still lives in her house. Your sister wants it sold. They are not speaking.

You are the executor. You did not ask for it, and nobody will thank you for it.

You may be grieving too. The admin is all over the place, and everyone is arguing.

Your brother will not leave.

The house cannot be sold with him in it.

This talk has been updated since it was first delivered in 2021. The full supporting paper, along with these slides, will be uploaded to the website following this talk. The numbers in brackets appearing on each slide allow you to navigate to the corresponding section in the paper.

Authority to act: the grant

An executor may issue a claim before probate but must prove title by the trial; a claim issued by an administrator before the grant is a nullity

Jennison v Jennison [2022] EWCA Civ 1682 at [18]

(2.1)

Grant waiting times

The published figures cover the common grants; special grants, including grants ad colligenda bona, are taking twelve months or more

HMCTS announcement, 14 February 2025; GOV.UK

(2.2)

Duties of the personal representative

The personal representative must “collect and get in the real and personal estate of the deceased and administer it according to law”

Administration of Estates Act 1925, s.25(a)

(2.3)

Costs protection

Where the claims may exceed the estate, the court can give advance directions on costs tailored to the insolvency risk

Wedgwood v Hosein [2024] EWHC 1836 (Ch)

(2.4 and 6.5)

Mortgaged property

The mortgagee “may go into possession before the ink is dry on the mortgage”, and its right “has nothing to do with default on the part of the mortgagor”

Four-Maids Ltd v Dudley Marshall (Properties) Ltd [1957] Ch 317 at 320

(2.5)

Insolvent estates

Where the estate cannot pay its debts in full, it is administered under the law of bankruptcy, and the house is realised for the creditors in their order of priority

Administration of Insolvent Estates of Deceased Persons Order 1986, art 4

(2.6)

Establishing the status

The basis of occupation is fixed by the position on the ground, not by what the occupier or the personal representative calls it, and it may have changed over the years

(3.1 and 4.4)

The beneficiary in occupation

A residuary beneficiary has no proprietary interest in any asset of the unadministered estate, only a right to have it duly administered

Marshall (Inspector of Taxes) v Kerr [1995] 1 AC 148 at 157–158

(3.3)

The Renters' Rights Act on a death

Ground 7 is not available against a person inheriting under the will or intestacy who lived in the dwelling as their only or principal home, subject to two narrow exceptions

Housing Act 1988, Sch 2, Ground 7, as amended by the Renters' Rights Act 2025, Sch 1 para 23(b) (3.4 and 4.2)

Notice to quit on the Public Trustee

On an intestacy, a valid notice to quit served on the Public Trustee ends the tenancy, and a later grant does not undo it

Fred Long & Sons Ltd v Burgess [1950] 1 KB 115 (CA)

(3.4 and 4.2)

The commercial tenant

Where the basis of occupation is unclear, serve a section 40 notice to require information about the tenancy, without prejudice to any contention that the 1954 Act applies

Landlord and Tenant Act 1954, s.40

(3.5 and 4.3)

Tenant or licensee

The hallmark of a tenancy is exclusive possession for a term, fixed or periodic

Street v Mountford [1985] AC 809 at 818

(3.6)

The licence ends on death

"A revocable licence is automatically determined by the death of the licensor"

Terunnanse v Terunnanse [1968] AC 1086 at 1095–1096

Woodfall: Landlord and Tenant, § 1:43

(4.4)

Serving without prejudice

Where the status is unclear, serve more than one notice to quit, each without prejudice to the other analysis

Wroe (t/a Telepower) v Exmos Cover Ltd [2000] 1 EGLR 66 (CA)

(4.4)

Notice to quit

A notice to quit a dwelling, or to end a periodic licence of one, must be in writing, contain the prescribed information and give at least four weeks

Protection from Eviction Act 1977, s.5(1), (1ZA) and (1A)

(4.4)

Procedure under Part 55

No interim possession order can be made against a defendant who entered or remained with the consent of a person who then had an immediate right to possession

CPR 55.21

(4.5)

Enforcement and goods left behind

A bailee may sell uncollected goods after notice to the owner; whether the estate is a bailee of an evicted occupier's goods has not been decided

Torts (Interference with Goods) Act 1977, s.12

(4.6)

The right to occupy under the 1996 Act

A beneficiary with an interest in possession may occupy trust land held for that purpose; the court's discretion under sections 14 and 15 is "substantially wider" than the trustees'

Bagum v Hafiz [2015] EWCA Civ 801 at [23]

(4.7)

Occupation rent

“a co-owner in occupation is not obliged to pay occupation rent merely because he is living in the property”

Ali v Khatib [2022] EWCA Civ 481 at [72]

(4.8)

Mesne profits

A trespasser pays damages for use and occupation at the ordinary letting value, without proof that the property would otherwise have been let

Swordheath Properties Ltd v Tabet [1979] 1 WLR 285 at 288

(4.8)

Article 8

The occupier cannot rely on Article 8 to obtain a different order from the one which the parties' relationship and the legislation require

McDonald v McDonald [2016] UKSC 28 at [40]

(4.9)

Adverse possession after the death

Land in an unadministered estate can be acquired by adverse possession

Nazir v Begum [2025] EWCA Civ 587 at [92] and [96]

(4.10)

Proprietary estoppel

Fulfilment of the promise is the likely starting point, unless it would be out of all proportion to the detriment

Guest v Guest [2022] UKSC 27 at [94]

(5.1)

Withdrawal and net detriment

Reliance ends when the assurance is withdrawn and the claimant is told; benefits received are set against the detriment

Scott v Scott [2025] EWHC 2796 (Ch) at [227]

(5.1)

The acquisition trust

Property acquired in one person's name on the agreed basis that it is held for others is held on trust; no detrimental reliance is needed

Khan v Khan [2025] EWCA Civ 1436

(5.2 and 6.1)

The 1975 Act and possession

Section 5 provides for interim payments out of the estate, not for the applicant to stay in the house

Smith v Smith [2011] EWHC 2133 (Ch) at [20]

(5.3)

Delaying possession

A possession claim may be stayed or adjourned until the 1975 Act claim is decided, because the occupation of the house may be a major element of that claim

Rowe v Clarke [2005] EWHC 3068 (Ch) at [65]

(5.3)

Severance under section 9

A section 9 order may be just where the home was bought with the deceased's money alone, was gifted, or was put in joint names to take it out of the estate

Cockell v Cockell [2025] EWHC 2490 (Ch) at [23]

(5.4)

Undue influence and the will

In a will case undue influence means coercion, and that only, and it must be more probable than any other hypothesis

Rea v Rea [2024] EWCA Civ 169 at [20] and [32]

(5.5)

Matrimonial home rights

Matrimonial home rights end on the death of the other spouse or civil partner, unless an order made during the marriage under section 33(5) provides otherwise

Family Law Act 1996, s.30(8)(a)

(4.4 and 5.6)

Common combinations

The personal representative who treats the defences as separate questions, handled in sequence, loses ground to a defendant whose adviser treats them as one negotiating position

(5.7)

Tactics

Ask at the outset: which kind of trust, which route to possession, which defence to anticipate, which costs protection to seek; then act on the answers

(6)

Which trust: the two strands

An acquisition trust arises from the terms on which title was taken; a common intention trust from detrimental reliance; the two can run in the alternative on the same facts

Parker v Parker-Bowyer [2024] EWHC 2239 (Ch) at [144] to [145]

(6.1)

Funding after Hirachand

A conditional fee success fee cannot form part of an award under the 1975 Act

Hirachand v Hirachand [2024] UKSC 43

(5.3 and 6.2)

Costs and Part 36

The modern emphasis is “to encourage without prejudice negotiation and to provide for very substantial costs shifting in favour of the successful party”

Lilleyman v Lilleyman (Costs) [2012] EWHC 1056 (Ch) at [26] to [27]

(6.3)

Part 64 or Part 55

A substantive defence is better met by a Part 64 claim for a declaration of the parties' rights; a procedural one by a possession claim under Part 55

(6.4)

Mediation and ADR

The court may stay proceedings for, or order, the parties to engage in a non-court-based process, provided the order does not impair the right to a fair trial and is proportionate

Churchill v Merthyr Tydfil CBC [2023] EWCA Civ 1416 at [54]

(6.6)

The occupier who lacks capacity

No settlement or compromise by or against a protected party is valid without the court's approval

CPR 21.10

(6.7)

Settlement with a protected party

A settlement with a party who lacked capacity, made without the court's approval, can be set aside years later

Dunhill v Burgin [2014] UKSC 18

(6.7)

Removing a personal representative

"friction or hostility between trustees and the immediate possessor of the trust estate is not of itself a reason for the removal of the trustees"

Thomas and Agnes Carvel Foundation v Carvel [2007] EWHC 1314 (Ch) at [47], adopting **Letterstedt v Broers (1884) 9 App Cas 371** at 389

(6.8)

Capital gains tax on the sale

Private residence relief on a disposal by personal representatives is available only within section 225A; consider an assent to the beneficiaries before the sale

Taxation of Chargeable Gains Act 1992, s.225A

(6.9)

Five themes

1. The occupier’s defences, restated: **Guest** and **Khan**
2. Funding of 1975 Act claims after **Hirachand**
3. Residential tenancies under the Renters’ Rights Act
4. Undue influence and the will after **Rea**
5. Slow machinery: special grants, inheritance tax, costs protection

(7)

Contact details

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Simon Lane is a barrister and accredited mediator specialising in property and estates and maintains a niche practice in the law of village greens. His practice often lies at the crossover of property, chancery, and occasionally, public law, giving him a unique advantage in complex, multidisciplinary cases.

Simon frequently acts in claims where issues of property and inheritance overlap – especially those left in occupation and involving the risk of losing a home, farm or business following a death. He is known for his sensitive handling of emotionally charged disputes between family members, both as counsel and mediator.

He is based in London but maintains a national practice, particularly across London, the South and the West of England.

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