

# Between Private Ordering and Public Regulation: Reassessing the Legal and Governance Framework for Boundary Fences in Malaysia

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## ABSTRACT

Boundary fences are central to neighbour relations in Malaysia, yet they exist within a fragmented and largely unregulated legal framework. The National Land Code 1965 is silent on fence-related obligations, and municipal by-laws regulate only technical aspects, leaving substantive responsibilities undefined. This gap—combined with institutional fragmentation and reliance on private negotiation—produces frequent disputes and inconsistent outcomes. Using Property Rights Theory, Neighbour Law, and Regulatory Governance Theory, this article analyses Malaysia's legal deficiencies and compares them with established frameworks in Australia, the United Kingdom, Singapore, and Hong Kong. The comparative insights illustrate how structured procedures, cost-sharing rules, and accessible tribunals reduce conflict. The article proposes a multi-tiered reform model, including a Boundary Fences Act, harmonised national standards, notice-and-consent mechanisms, and tribunal-based dispute resolution. A coherent regulatory framework is essential for promoting legal certainty, neighbour harmony, and effective governance in Malaysia's urban residential environment.

**Keywords:** Boundary fences; neighbour disputes; property law; local authorities; regulatory reform; Malaysia.

## INTRODUCTION

### Background and Significance

Boundary fences are a fundamental element of residential property ownership, serving as physical markers that delineate land, signal control, and shape the spatial extent of proprietary rights. Scholars widely acknowledge that physical boundary structures express ownership, territoriality, and exclusion (Honoré, 1987; Ellickson, 1991). These structures also perform critical social functions, shaping expectations of privacy, security, and neighbourly interaction within residential environments (Gehl, 2011; Blomley, 2005).

However, in Malaysia, the legal governance of boundary fences remains significantly underdeveloped. Although the National Land Code 1965 establishes cadastral boundaries with precision, it provides no guidance on the placement, construction, or status of boundary fences—a doctrinal silence that creates uncertainty in practice (Teo, 2019; Foo, 2016). Local governments regulate fence height and materials through by-laws such as Rule 98, but these provisions address only technical specifications and fail to regulate neighbour obligations, cooperative responsibilities, or dispute-resolution pathways (MBPJ, 2018; Abdul Aziz, 2014).

Consequently, homeowners rely heavily on private ordering, informal norms, and personal negotiation, despite evidence that such mechanisms are insufficient in diverse, high-density, and modern residential settings (Ellickson, 1991; Steele & Tulkens, 2021). When disputes arise—often concerning encroachment, misalignment, height, or unilateral replacement—parties are forced to turn to tort law and litigation, which is reactive, adversarial, and costly, making it poorly suited for routine neighbour conflicts (Morgan, 2010; Lee, 2020).

These legal and governance gaps are increasingly problematic as Malaysia becomes more urbanised and socially heterogeneous. Urban planning scholars note that physical proximity without clear behavioural rules increases

the likelihood of neighbour conflict, especially where institutional support is weak (Low, 2003; Talen, 2019). In such contexts, the absence of a coherent boundary-fence framework creates uncertainty, inconsistent administrative responses, and preventable disputes (Baldwin, Cave, & Lodge, 2012).

This study is therefore significant because it addresses a long-standing yet under-researched area of Malaysian property and land governance. By examining both doctrinal and institutional dimensions, and by drawing on comparative insights from jurisdictions with established neighbour-management legislation, the study aims to offer an evidence-based foundation for reform. It responds to the broader scholarly recognition that land governance must integrate both legal clarity and social functionality in order to support stable, harmonious residential environments (Ben-Shahar & Porat, 2017; Ostrom, 1990).

## Problem Statement

Despite the central role that boundary fences play in defining property limits, facilitating neighbour relations, and supporting residential harmony, Malaysia lacks a coherent and comprehensive legal framework to regulate them. The National Land Code 1965, while providing precise cadastral boundaries, contains no provisions governing the placement, construction, maintenance, or legal status of boundary fences (Teo, 2019; Foo, 2016). This statutory silence creates a disconnect between the legal boundary and the physical boundary, leaving homeowners without guidance in managing shared perimeter structures.

Local authorities regulate boundary fences primarily through technical by-laws, such as height limits, material specifications, and building design rules (MBPJ, 2018; Abdul Aziz, 2014). However, these by-laws do not address substantive neighbour obligations—including notice, consent, cost-sharing, or maintenance duties. Scholars note that purely technical regulations cannot function as effective governance tools when relational or cooperative duties are absent (Baldwin, Cave, & Lodge, 2012).

In practice, Malaysia therefore relies heavily on private ordering, where neighbours negotiate informally to manage boundary issues. However, private ordering is effective only where social norms are strong, communities cohesive, and disputes limited (Ellickson, 1991). Contemporary Malaysian neighbourhoods—characterised by increasing density, mobility, and cultural diversity—lack the interpersonal cohesion required for private ordering to function reliably (Talen, 2019; Low, 2003). As a result, informal negotiations often fail, leading to escalating tensions.

When negotiations break down, homeowners turn to tort law—especially trespass, nuisance, and negligence—as the default mechanism for resolving boundary disputes. Yet tort law is inherently reactive and adversarial, offering remedies only after harm occurs and requiring costly litigation (Morgan, 2010; Lee, 2020). It provides no preventive structure, no procedural safeguards, and no guidance for cooperative behaviour. This reliance on litigation is inefficient and socially disruptive, particularly for disputes involving minor encroachments or maintenance disagreements.

Institutionally, boundary fence issues fall between agencies. Land offices manage cadastral boundaries but decline involvement in physical fence disputes (Teo, 2019). Local councils regulate fence height but lack jurisdiction over neighbour conflicts (Abdul Aziz, 2014). Courts adjudicate disputes but repeatedly note the absence of statutory guidance. Governance scholars describe such situations as institutional fragmentation, where overlapping but incomplete mandates produce gaps in regulatory coverage (Baldwin et al., 2012; Lodge & Wegrich, 2014).

Consequently, Malaysia faces an environment in which:

- legal rules are fragmented,
- institutional roles are unclear,
- private ordering is unreliable,
- judicial remedies are costly, and

- preventive governance is non-existent.

This fragmented framework not only increases the incidence of neighbour disputes but also undermines the practical exercise of property rights and public confidence in land governance systems.

## Research Objectives

This study aims to examine and reassess Malaysia's fragmented legal and governance framework governing boundary fences, with the broader goal of proposing a more coherent and preventive system. Specifically, the study seeks to analyse the existing doctrinal landscape by evaluating the National Land Code 1965, local authority by-laws, and relevant tort and case law to determine the extent to which current rules adequately regulate the construction, placement, and management of boundary fences. It further aims to investigate the institutional and governance dimensions of boundary fence regulation, including the roles, limitations, and coordination challenges faced by land offices, local authorities, survey departments, and the courts. By identifying the doctrinal, procedural, and institutional gaps that contribute to recurring neighbour disputes and administrative inconsistencies, the study intends to articulate a clear diagnosis of the systemic weaknesses within Malaysia's current framework. Finally, through a comparative analysis of established governance models from the United Kingdom, Australia, Singapore, and Hong Kong, the study aims to formulate evidence-based recommendations for legislative and policy reforms, with the objective of developing a structured, equitable, and administratively workable boundary fence governance system for Malaysia.

## Scope of Study

This study focuses on the governance of boundary fences within the context of landed residential properties in Peninsular Malaysia, which fall under the National Land Code 1965. The analysis is limited to physical boundary structures such as fences, walls, railings, and hedges that demarcate adjoining private lots, and does not extend to internal partitions within strata schemes, which are governed by the Strata Management Act 2013. The study examines the legal instruments most directly relevant to boundary management—including the National Land Code, local authority planning and building by-laws, tort principles, and judicial decisions—while excluding contractual arrangements unique to gated communities or private developer covenants. As the study adopts a doctrinal, administrative, and comparative approach, it does not rely on empirical fieldwork or survey data; instead, it synthesises statutory materials, case law, governmental documents, and academic literature. In its comparative component, the study examines selected common law jurisdictions—the United Kingdom, Australia, Singapore, and Hong Kong—chosen for their relevance to Malaysia's legal heritage and governance structures. The scope is therefore carefully defined to ensure conceptual clarity, jurisdictional relevance, and analytical depth, while maintaining a clear focus on the regulatory gaps and governance challenges surrounding boundary fences in Malaysia.

## Significance of Study

This study is significant for its contribution to Malaysian land law, property governance, and neighbour-relations regulation in several important respects. First, it provides a comprehensive doctrinal analysis of boundary fence regulation—an area that has received limited scholarly attention despite its practical relevance in everyday property ownership. By synthesising statutory provisions, local authority by-laws, tort principles, and judicial decisions, the study clarifies a legal landscape that is currently fragmented and poorly understood by both practitioners and homeowners. Second, the study offers a governance-oriented assessment of institutional roles and regulatory practices, highlighting how gaps and overlaps between land offices, local councils, and the courts contribute to inconsistent enforcement and ineffective dispute management. This aligns with broader scholarship emphasising the need for coordinated and preventive governance mechanisms in property regulation. Third, by examining how comparable common law jurisdictions have structured neighbour-management regimes, the study generates policy-relevant comparative insights that can inform Malaysia's legislative development. Finally, the study is practically significant: it addresses a recurrent source of neighbourhood tension and proposes a clearer, more predictable framework that can reduce disputes, enhance administrative efficiency, and strengthen public confidence in land governance. Collectively, these contributions demonstrate the relevance of

the research not only to academic discourse but also to policymakers, regulators, legal practitioners, and Malaysian homeowners.

## LITERATURE REVIEW

### Conceptual Foundations of Boundary Fences

The concept of a boundary fence is rooted in broader understandings of property, ownership, and territorial control. In classical jurisprudence, ownership is frequently conceptualised as a bundle of incidents, including the rights to exclusive use, control, and security over a thing (Honoré, 1987). Land law scholars have similarly emphasised that property in land conveys not only legal title but also a deeply embedded sense of spatial belonging and control over a defined area (Gray & Gray, 2009; Hodgson, 2013). Within this framework, fences and walls function as material manifestations of the right to exclude and as visible signals of the boundaries of private entitlement (Blomley, 2005).

From a spatial and socio-legal perspective, boundary structures operate at the intersection of legal ordering and lived space. Gehl (2011) highlights how physical delineations in the built environment organise social interaction by controlling visibility, access, and movement. Fences thereby influence the permeability of space, mediating the relationship between public and private realms (Low, 2003; Blomley, 2016). At the neighbourhood scale, boundary features also shape perceptions of safety and privacy, as residents associate clear demarcations with security, control, and autonomy over their immediate surroundings (Talen, 2019; Gehl, 2011).

At the same time, fences and walls are inherently relational. They do not merely define “my land” and “your land”, but also mark a shared interface where two proprietary spheres meet. Property theorists have therefore argued that boundaries embody both exclusion and interdependence: they enable individual autonomy while simultaneously requiring a degree of coordination between neighbours who must coexist along a shared line (Ben-Shahar & Porat, 2017; Gray & Gray, 2009). This duality becomes particularly salient in urban and suburban environments where lots are small, homes are proximate, and boundary decisions about height, materials, and alignment have immediate impacts on neighbouring properties (Low, 2003; Talen, 2019).

Institutional scholars have further noted that boundaries are not self-enforcing; they require legal rules and social norms to determine how they are drawn, marked, and respected (Ostrom, 1990). In the absence of clear governance arrangements, boundary structures can become sources of contestation rather than stability. The literature on common-pool resources and local governance underscores that when physical markers are not supported by robust institutional frameworks, conflict and uncertainty are likely to arise (Ostrom, 1990; Baldwin, Cave, & Lodge, 2012). This insight underpins much of the contemporary interest in how legal systems regulate boundary structures between adjoining owners.

### Boundary Fence Disputes and Neighbour Relations

Neighbour relations literature shows that disputes over fences, walls, and hedges are among the most common triggers of interpersonal conflict in residential communities. Ellickson’s (1991) seminal study of Shasta County demonstrated that neighbours routinely confront conflicts arising from boundary use, ranging from wandering cattle to fence placement and maintenance. Although his empirical work focused on a rural American context, the broader insight—that boundaries are frequent sites of dispute—is echoed in urban studies and property scholarship more generally (Blomley, 2005; Talen, 2019).

Boundary fence disputes typically cluster around recurring issues: alleged encroachments, disagreement over the “true” boundary line, dissatisfaction with fence height or appearance, unilateral demolition or replacement of existing structures, and refusal to contribute to construction or repair costs (Ellickson, 1991; Gray & Gray, 2009). Where social cohesion is strong and neighbours share stable norms, informal resolution through private negotiation and reciprocal adjustment may suffice (Ellickson, 1991; Ostrom, 1990). However, in diverse and transient urban neighbourhoods—such as those increasingly found in contemporary cities—informal mechanisms often prove fragile or ineffective (Low, 2003; Talen, 2019).



Tort law plays a prominent role in much of the neighbour-relations literature. Nuisance, trespass, and negligence are commonly invoked when one landowner's boundary decisions allegedly interfere with another's enjoyment or security (Morgan, 2010; Lee, 2015). Private nuisance regulates unreasonable interferences, such as fences that block light, divert water, or create structural instability, while trespass addresses physical intrusions where structures cross the legal boundary (Morgan, 2010). Yet scholars have argued that tort law is structurally reactive: it offers remedies after harm or dispute has arisen, but it does not establish the proactive rules necessary to guide neighbour conduct *ex ante* (Lee, 2015; Ben-Shahar & Porat, 2017).

Socio-legal research also highlights the emotional and relational dimensions of boundary disputes. Conflicts over fences often carry symbolic weight, as they are experienced not merely as technical disagreements but as challenges to respect, recognition, and neighbourliness (Blomley, 2005; Low, 2003). Studies in planning and urban sociology note that repeated or unresolved boundary disputes can erode social trust, contribute to neighbourhood fragmentation, and generate lasting interpersonal hostility (Talen, 2019; Gehl, 2011). These findings support the argument that an effective governance framework for boundary fences must go beyond doctrinal rules to address the relational and procedural aspects of neighbour interaction.

### **Legal and Regulatory Context in Malaysia**

The Malaysian literature on land law and local governance provides important insights into the structural context within which boundary fences are regulated—or, more accurately, under-regulated. Doctrinal works on Malaysian land law focus on the National Land Code 1965 (NLC) as the cornerstone of title registration and boundary determination, emphasising the Torrens-inspired system of indefeasible title and cadastral certainty (Teo & Khaw, 2012; Sihombing, 2005). These texts highlight that the NLC allocates responsibility for boundary definition to survey authorities and land offices, but they also acknowledge the Code's silence on the regulation of physical boundary structures such as fences and walls (Teo & Khaw, 2012).

At the local government level, studies of urban governance in Malaysia note that municipal councils exercise regulatory powers under the Local Government Act 1976 and the Street, Drainage and Building Act 1974, primarily through subsidiary legislation such as the Uniform Building By-Laws 1984 (UBBL) (Abdul Aziz, 2014; Ainul Jaria Maidin, 2012). These by-laws contain detailed provisions on building control, structural safety, and certain aspects of wall and fence construction, often including height limits and design specifications for boundary structures. However, local government and planning scholarship has observed that such regulations are principally technical and rarely address the relational or shared aspects of neighbour obligations (Abdul Aziz, 2014; Ainul Jaria Maidin, 2007).

The Malaysian tort literature explains how private law functions as a residual mechanism for resolving boundary-related disputes. Commentaries on tort law in Malaysia discuss the application of trespass, nuisance, and negligence in land-related conflicts, including those involving encroaching walls, unstable retaining structures, and interference with drainage (Lee, 2020). Malaysian courts have generally followed common law principles, yet case law analysis shows that judicial decisions focus on specific harms and factual disputes rather than articulating a general framework for managing shared boundaries (Teo & Khaw, 2012; Lee, 2020).

Despite an expanding body of writing on Malaysian land administration, planning control, and local government, there remains a notable absence of scholarship engaging directly with boundary fences as an integrated subject of doctrinal and governance analysis. Most discussions treat boundary issues tangentially, such as in surveys of land disputes, planning control, or neighbourhood conflict resolution, without examining fences as a distinct policy and legal problem. This lacuna in the literature mirrors the doctrinal gaps in the legal framework itself.

### **Theoretical Framework**

#### **(a) Property Rights Theory**

Property Rights Theory provides a foundational lens for understanding the legal and social significance of boundary fences. Honoré's (1987) classic analysis of ownership identifies a cluster of incidents—including the right to exclusive use, the right to manage, and the right to security—that together constitute full ownership.

Gray and Gray (2009) further argue that land ownership entails a powerful sense of territorial control over a defined spatial area. From this perspective, boundary fences operate as visible, material reinforcements of these incidents of ownership: they demarcate the spatial extent of exclusion, control access, and symbolise proprietary autonomy (Gray & Gray, 2009; Blomley, 2005).

Nevertheless, property rights are not absolute; they are constrained by the rights of others and by public regulation. Property theorists have long recognised that boundaries are also sites of obligation and interdependence, where competing claims must be balanced (Ben-Shahar & Porat, 2017). In this sense, boundary fences illuminate a fundamental tension in property law between individual autonomy and relational responsibility, providing a useful entry point for examining how legal systems mediate between private entitlements and collective or neighbourly interests.

### **(b) Neighbour Law and Nuisance Theory**

Neighbour Law and Nuisance Theory focus on the relational dimension of property. Nuisance law regulates unreasonable interferences with the use and enjoyment of land, and is frequently invoked in disputes involving overbearing structures, unstable walls, or harmful alterations to boundary features (Morgan, 2010; Lee, 2015). Classic nuisance scholarship emphasises the concept of reciprocity: each landowner must tolerate a certain level of inconvenience arising from neighbouring uses, while the law intervenes when interference crosses the threshold of reasonableness (Morgan, 2010).

However, scholars have noted that tort-based neighbour law is primarily reactive. It responds to harm rather than structuring interactions in advance, and it does not typically impose procedural obligations such as notice, consultation, or cost-sharing (Ben-Shahar & Porat, 2017; Ellickson, 1991). In the context of boundary fences, nuisance and trespass doctrines offer remedies after a dispute arises, but they do not provide a framework for preventive governance or cooperative decision-making. This limitation supports the need for complementary regulatory mechanisms that address neighbour relations more systematically.

### **(c) Regulatory Governance Theory**

Regulatory Governance Theory examines how laws, institutions, and administrative practices interact to produce regulatory outcomes. Baldwin, Cave, and Lodge (2012) argue that effective regulation requires clarity of substantive rules, coherence in institutional mandates, and reliable enforcement mechanisms. Lodge and Wegrich (2014) similarly highlight that fragmented mandates and poor coordination can lead to governance gaps, where no agency assumes full responsibility for a regulatory problem.

Applied to boundary fences, Regulatory Governance Theory draws attention to the distribution of authority among land offices, survey departments, local councils, and courts, and to the absence of a central institution tasked with overseeing shared boundary structures. It also foregrounds the importance of preventive regulation—using procedures such as notice requirements, formal consultation, and early dispute resolution—to avoid conflict rather than merely responding to it. Comparative regulatory scholarship shows that jurisdictions with dedicated neighbour-law statutes often embed such mechanisms directly into legislation, thereby aligning institutional responsibilities with clear procedural obligations (Baldwin et al., 2012).

### **(d) Integrated Analytical Lens**

This study adopts an integrated theoretical framework that combines Property Rights Theory, Neighbour Law and Nuisance Theory, and Regulatory Governance Theory. Property Rights Theory explains the significance of fences as embodiments of ownership and territorial control; Neighbour Law and Nuisance Theory illuminate the interpersonal disputes that arise along shared boundaries; and Regulatory Governance Theory exposes the institutional and systemic conditions that determine how effectively these disputes are regulated. The integration of these perspectives aligns with contemporary calls in socio-legal scholarship to analyse property problems at multiple levels—doctrinal, relational, and institutional—rather than through a single theoretical lens (Ostrom, 1990; Ben-Shahar & Porat, 2017; Blomley, 2005).

### **(e) Gaps in Existing Scholarship and Legal Framework**

The literature reviewed above reveals several interrelated gaps. First, although there is substantial work on Malaysian land law, local government, and planning, there is no systematic scholarly treatment of boundary fences as a distinct subject of legal and governance analysis. Existing works mention boundary issues only incidentally within broader discussions of land disputes, title registration, or planning control (Teo & Khaw, 2012; Abdul Aziz, 2014). Second, while tort commentaries describe how nuisance and trespass apply to neighbour disputes, they do not explore the limitations of tort as a primary governance mechanism for routine boundary issues (Lee, 2020; Morgan, 2010).

Third, there is a notable disconnect between international scholarship on neighbour-law frameworks—such as statutory schemes for party walls and dividing fences in other common law jurisdictions—and Malaysian doctrinal writing, which has yet to engage with these models in a sustained way (Ellickson, 1991; Baldwin et al., 2012). Fourth, existing Malaysian literature has not systematically examined the implications of institutional fragmentation, despite governance theory highlighting how overlapping but incomplete mandates can produce regulatory vacuums (Lodge & Wegrich, 2014; Ainul Jaria Maidin, 2012).

Finally, there is little scholarly work proposing integrated reforms that combine doctrinal clarity, procedural safeguards, and institutional coordination in the governance of boundary fences. This study seeks to address these gaps by offering a multi-level analysis of the Malaysian framework, situating it within comparative experience, and proposing a more coherent model for boundary fence regulation.

## **METHODOLOGY**

This study adopts a qualitative doctrinal and governance-oriented methodology to examine the legal and institutional framework regulating boundary fences in Malaysia. Doctrinal legal research forms the core analytical approach, which entails identifying, interpreting, and synthesising primary legal sources such as statutes, subsidiary legislation, case law, and legal principles (Hutchinson, 2010; Salter & Mason, 2007). This method is appropriate because the research question concerns the adequacy, coherence, and gaps of the existing legal framework, which are best understood through a systematic examination of legal texts and authoritative sources. The study therefore analyses the National Land Code 1965, the Local Government Act 1976, the Street, Drainage and Building Act 1974, and selected local authority by-laws—most notably the Uniform Building By-Laws 1984 and municipal guidelines relating to boundary fences. Judicial decisions are also examined to understand how Malaysian courts have treated disputes involving encroachment, nuisance, trespass, and boundary demarcation, as case law provides insight into the interpretive and remedial approaches adopted by the judiciary.

In addition to doctrinal analysis, the study employs governance analysis, which draws on the principles of regulatory governance to evaluate how institutions interact, exercise authority, and contribute to regulatory outcomes (Baldwin, Cave, & Lodge, 2012; Lodge & Wegrich, 2014). This approach is essential because boundary fence regulation in Malaysia involves multiple overlapping bodies—land offices, survey departments, local authorities, and the courts—whose fragmented mandates influence how disputes are managed. Governance analysis enables the study to assess the extent of institutional coordination, administrative effectiveness, enforcement capacity, and the presence or absence of procedural mechanisms such as notice requirements, consultation duties, and administrative dispute resolution.

The study also incorporates comparative legal analysis, examining boundary-governance frameworks in the United Kingdom, Australia, Singapore, and Hong Kong. Comparative analysis serves two purposes: first, to identify structural elements of effective neighbour-law regimes—such as statutory duties, surveyor mechanisms, tribunal processes, and cost-sharing rules—and second, to evaluate their potential relevance and adaptability to the Malaysian context (Zweigert & Kötz, 1998; Örüci, 2006). The selected jurisdictions share common law foundations with Malaysia and have well-developed statutory regimes governing party walls or dividing fences, making them suitable for functional comparison.

In addition, document analysis is used to examine secondary materials, including academic literature, planning guidelines, local authority policies, and land administration reports. Document analysis allows triangulation of findings and enhances the depth of understanding regarding administrative practices, socio-legal dynamics, and the practical challenges faced by homeowners and enforcement bodies (Bowen, 2009).

The methodology prioritises validity through triangulation—comparing doctrinal, governance, and comparative insights—and aims for reliability through systematic sourcing and transparent reasoning. However, the study recognises its limitations: it does not include empirical fieldwork such as interviews or surveys, and therefore relies primarily on text-based evidence. Nonetheless, doctrinal and governance analysis remains appropriate and sufficient for identifying structural gaps and proposing legal reforms.

## FINDINGS AND DISCUSSION

### Doctrinal Findings: The Malaysian Legal Landscape

The doctrinal analysis reveals that Malaysia's legal landscape governing boundary fences is fragmented, incomplete, and insufficiently equipped to regulate neighbour relations relating to boundary structures. Although the National Land Code 1965 (NLC) provides a robust system of cadastral boundary determination, clarity of title, and spatial certainty, it is silent on the status, construction, maintenance, and legal implications of physical boundary fences. This statutory silence creates a structural gap between the legal boundary (as surveyed and registered) and the physical boundary (as built by homeowners). Scholars of Malaysian land law have noted that while the NLC contains detailed provisions on boundary ascertainment, it does not extend to regulating shared physical structures, leaving homeowners without statutory guidance in managing fences or walls along common boundaries (Teo & Khaw, 2012; Sihombing, 2005).

Local authorities attempt to fill part of this regulatory vacuum through planning and building by-laws enacted under the Local Government Act 1976 and the Street, Drainage and Building Act 1974. These by-laws—particularly the Uniform Building By-Laws 1984 (UBBL)—contain technical requirements relating to height, openness, and materials. Certain municipal councils also issue planning guidelines (e.g., MBPJ's Boundary Fence Guidelines) specifying permissible fence designs. However, these rules only regulate the physical characteristics of fences, not the relational obligations between adjoining owners. They do not prescribe duties of notice, consultation, consent, cost-sharing, access for repairs, or procedures for removing or modifying existing fences. Scholars in local governance and planning law have highlighted that such by-laws are administrative and technical in nature, not relational or cooperative (Abdul Aziz, 2014; Ainul Jaria Maidin, 2012).

In the absence of statutory duties, the default regulatory mechanism becomes private law, particularly trespass, nuisance, and negligence. While tort law provides remedies when a fence crosses a boundary, causes structural harm, or interferes with neighbouring use and enjoyment, it is inherently reactive rather than preventative. Tort law intervenes only after a dispute has escalated into actionable harm, requiring litigation—an adversarial, costly, and time-consuming process. Tort scholars argue that neighbour disputes are poorly served by litigation because courts resolve specific harms without articulating general rules or preventive standards (Morgan, 2010; Lee, 2020). As a result, Malaysian case law on boundary structures is limited, inconsistent, and unable to provide a coherent doctrinal framework.

Furthermore, doctrinal materials reveal that no statutory body is empowered to adjudicate minor boundary fence disputes administratively. Land offices oversee cadastral surveys but disclaim responsibility for physical fences; local councils enforce technical building rules but lack jurisdiction over neighbour disagreements; and courts remain the only forum for dispute resolution. This doctrinal vacuum mirrors the governance fragmentation discussed later in Section 4.2. As legal scholars on regulation note, such fragmented authority often results in under-regulation, gaps in enforcement, and inconsistent outcomes (Baldwin, Cave, & Lodge, 2012; Lodge & Wegrich, 2014).

Taken together, the doctrinal findings demonstrate that Malaysia's existing legal framework lacks substantive rules, procedural obligations, and institutional mechanisms to regulate boundary fences effectively. The absence



of statutory guidance means that homeowners must rely on private negotiation and tort law, leading to uncertainty, inconsistency, and preventable conflict.

### **(a) National Land Code 1965**

The National Land Code 1965 (NLC) serves as the principal statute governing land administration, title registration, and boundary determination in Peninsular Malaysia. Its Torrens-inspired system emphasises indefeasibility of title, cadastral accuracy, and certainty of boundaries (Teo & Khaw, 2012; Sihombing, 2005). Within this framework, the delineation of legal boundaries is treated as a technical, survey-oriented process managed by the Director of Survey and Mapping (JUPEM) and the Land Administrator. Part IV of the NLC, together with the Survey Regulations, sets out procedures for boundary definition, re-survey, and demarcation, thereby ensuring that cadastral boundaries are ascertainable with precision. However, although the Code establishes the legal boundary with considerable detail, it remains entirely silent on the regulation of physical boundary structures, such as fences, walls, or hedges placed along or near the cadastral line.

The NLC's silence reflects its historical orientation toward land registration and surveying rather than neighbour relations or physical demarcations. Scholars of Malaysian land law note that the Code was drafted to secure certainty in title and boundary identification, not to govern the social or physical manifestations of boundary occupation (Teo & Khaw, 2012; Sihombing, 2005). As a result, while section 396 of the NLC empowers land administrators to order boundary inquiries in cases of uncertainty or dispute over the cadastral line, these provisions do not extend to disputes arising from the location, construction, maintenance, or unilateral modification of physical fences. The Code therefore provides the "where" of boundary lines but offers no guidance on the "what" or "how" of boundary structures.

This doctrinal gap is consequential. Because the NLC does not prescribe rules for boundary fences, adjoining landowners must determine the construction or modification of fences privately. There is no statutory requirement for one owner to obtain the consent of the other, no mandate for notice prior to construction, and no rule on how costs should be shared for repair or replacement. In contrast, jurisdictions such as Australia and the United Kingdom embed such duties directly into statutory neighbour-law regimes (Party Wall etc. Act 1996; Dividing Fences Act 1991 (NSW)), demonstrating that Malaysia's omission is an outlier and a source of regulatory incompleteness.

The absence of statutory duties within the NLC is compounded by the lack of integration between cadastral and physical boundaries. Malaysian cadastral plans indicate the legal boundary but do not show the location of physical fences. This disconnect often leads to situations where fences are placed near but not on the boundary line, or where landowners inadvertently encroach due to mistaken assumptions about boundary location (Foo, 2016). When disputes arise, parties frequently request land offices to intervene; however, land administrators consistently take the position that they have no jurisdiction over physical structures unless the dispute concerns the legal boundary itself. This institutional stance reflects the narrow statutory mandate of the NLC, which does not extend to regulating the material expression of boundaries.

Malaysian courts have acknowledged the limitations of the NLC in dealing with physical boundary disputes. Case law indicates that courts are often forced to rely on common law principles of trespass, nuisance, and equitable remedies when fences encroach, collapse, or obstruct neighbouring land (Lee, 2020). However, such judicial interventions are applied after the conflict has escalated, and they do not provide a preventive or systematic solution. Courts have also emphasised that the NLC does not regulate fence placement, leaving them without statutory guidance on how to allocate responsibilities between neighbours (Teo & Khaw, 2012). This reinforces the structural consequences of the Code's silence.

Legal scholars argue that a modern land governance framework must connect cadastral certainty with the rules governing physical occupation of boundary spaces (Baldwin, Cave, & Lodge, 2012). The NLC's failure to regulate physical boundary structures therefore results in a doctrinal disconnect between public cadastral regulation and private boundary use. In practice, this gap leaves homeowners uncertain about their rights and obligations and contributes to the rising incidence of neighbour disputes—many of which could be avoided through statutory duties of consultation, notice, or cost-sharing.

In summary, the National Land Code 1965 provides an adequate framework for cadastral boundary determination but offers no regulation of boundary fences, creating a structural gap that leaves adjoining landowners reliant on private negotiation or tort law. This doctrinal finding highlights the need for legislative reform to integrate property boundaries with their material expressions and to provide procedural obligations that prevent disputes before they arise.

### **(b) Local Authority By-Laws**

Local authorities in Malaysia derive regulatory authority over the construction of boundary structures from the Local Government Act 1976 (Act 171) and the Street, Drainage and Building Act 1974 (Act 133). These statutes empower municipal councils to enact subsidiary legislation—most notably the Uniform Building By-Laws 1984 (UBBL)—and to issue planning guidelines regulating the physical characteristics of boundary fences and walls. However, while these instruments contain detailed technical standards, they do not regulate neighbour relations, shared obligations, or procedural duties between adjoining owners. This doctrinal limitation results in a regulatory framework that governs fences as structures, but not as shared boundary features requiring cooperative governance.

The UBBL, enacted as a uniform code intended to be adopted by all local authorities in Peninsular Malaysia, provides specifications on building safety, structural integrity, and design requirements. Certain provisions govern aspects of fencing—for example, permissible heights, materials, and the requirement that structures must not endanger public safety (UBBL, 1984). Municipal councils commonly adopt additional planning guidelines that elaborate on these standards. For instance, Majlis Bandaraya Petaling Jaya (MBPJ) prescribes maximum heights of 1.8 metres for solid boundary walls and 2.75 metres for fences that allow airflow and light penetration. These rules reflect modern urban planning principles prioritising visual permeability and ventilation (MBPJ, 2018).

However, academic analyses of local government and planning law consistently highlight that these by-laws are technical and administrative, not relational or substantive (Abdul Aziz, 2014; Ainul Jaria Maidin, 2012). They regulate what can be built, not how adjoining owners should cooperate in relation to shared boundaries. As such, the by-laws do not address:

- whether an adjoining owner must be consulted before a fence is erected,
- whether consent is required before replacing or altering an existing boundary fence,
- how costs for construction or repair should be shared,
- who is responsible for maintenance,
- what procedures apply when one neighbour refuses to cooperate, or
- how to resolve disagreements arising from fence placement or design.

The absence of relational duties is particularly evident when compared with analogous frameworks in other common law jurisdictions. For example, Australia's Dividing Fences Acts and the United Kingdom's Party Wall etc. Act 1996 impose statutory notice, consultation, and dispute-resolution obligations—elements completely absent from Malaysian municipal by-laws (Baldwin, Cave, & Lodge, 2012; Ellickson, 1991). Malaysian by-laws, by contrast, govern boundary structures from a construction-control perspective, not a neighbour-governance perspective.

Furthermore, the non-uniform adoption of the UBBL and planning guidelines results in regulatory inconsistency across local authorities. While the UBBL is intended to be adopted uniformly, municipal councils often modify, supplement, or interpret the by-laws differently depending on local planning philosophies and administrative priorities (Abdul Aziz, 2014). Some councils issue detailed boundary fence guidelines, while others provide

none. This patchwork regulatory landscape contributes to uncertainty among homeowners and inconsistent enforcement across local jurisdictions.

Empirical studies on Malaysian local authorities highlight capacity constraints that further limit the effectiveness of by-laws. Local councils often prioritise major building works and safety issues rather than minor boundary matters, resulting in weak enforcement and selective monitoring (Ainul Jaria Maidin, 2012). Because by-laws do not regulate neighbour obligations, local authorities frequently decline to intervene in disputes between adjoining owners, advising parties to resolve matters privately or to seek civil remedies. This institutional stance reinforces the notion that boundary fence issues fall outside the purview of municipal governance, despite the fact that fences significantly affect neighbourhood aesthetics, privacy, and interpersonal relations.

In practice, the regulatory gap created by the technical focus of by-laws forces neighbours into private ordering—a system that is effective only when social norms are strong and relationships are cooperative (Ellickson, 1991). In diverse and high-density urban settings, however, private ordering often breaks down, resulting in disputes that escalate to litigation under tort law. Because municipal by-laws offer no guidance on neighbour coordination, they unwittingly contribute to the systemic reliance on adversarial legal processes to resolve routine boundary issues.

In sum, local authority by-laws in Malaysia provide a technical regulatory framework governing the physical characteristics of fences but are entirely silent on relational, procedural, and cooperative aspects of shared boundary governance. This doctrinal silence, combined with inconsistent adoption and weak enforcement, contributes directly to the uncertainty, fragmentation, and conflict observed in the management of boundary fences.

### **(c) Tort Law as Default Governance Mechanism**

In the absence of statutory rules governing boundary fences, Malaysian homeowners frequently turn to tort law—particularly the doctrines of trespass, nuisance, and negligence—as the primary legal mechanisms for resolving disputes. Tort law thus functions as a default system of boundary governance, filling the regulatory vacuum left by the National Land Code and local authority by-laws. While tort doctrines provide remedies for specific harms arising from boundary structures, they are inherently reactive, individualised, and litigation-driven, making them ill-suited as the main framework for managing routine neighbour interactions (Lee, 2020; Morgan, 2010).

#### **Trespass to Land**

Trespass is commonly invoked when a boundary fence encroaches onto neighbouring land. Under Malaysian common law, any physical intrusion onto another's land—however minor—is actionable per se. Courts have consistently adopted a strict approach to boundary encroachment, requiring the removal of structures that cross legal boundaries, even if the intrusion was inadvertent or minimal (Teo & Khaw, 2012). While this strict liability model protects proprietary rights and reflects the sanctity of cadastral boundaries, scholars argue that it offers no procedural safeguards such as notice or consultation prior to construction, thus allowing disputes to escalate unnecessarily (Morgan, 2010). Moreover, remedying encroachment often requires landowners to file actions in the High Court, making enforcement costly and time-consuming.

#### **Private Nuisance**

Private nuisance governs situations where a boundary fence interferes with a neighbour's use or enjoyment of land—for example, by blocking air or light, diverting drainage, or creating structural instability. Malaysian courts typically assess nuisance claims using the “reasonableness” standard inherited from English law, balancing the defendant's use of their land against the plaintiff's right to quiet enjoyment (Lee, 2020). However, nuisance claims are fact-intensive, unpredictable, and costly to litigate; they also require plaintiffs to demonstrate substantial and unreasonable interference, which is not always straightforward (Morgan, 2010). As a result, nuisance law does little to clarify in advance what types of boundary fences are permissible or how neighbours should cooperate in constructing or modifying them.

#### **Negligence and Structural Harm**

Negligence claims may arise when poorly constructed or poorly maintained boundary fences collapse, cause injury, or create foreseeable risks. Malaysian courts apply general negligence principles, requiring plaintiffs to show duty of care, breach, and causation. Yet scholarly commentary suggests that negligence is an inadequate tool for routine boundary management, as it applies only when physical damage or personal injury occurs (Lee, 2020). It does not articulate standards for **preventive maintenance** or **mutual responsibilities**, leaving neighbouring landowners without clear guidance on how risks should be shared or mitigated.

### **Limitations of Tort Law as a Governing Regime**

Collectively, tort doctrines demonstrate several structural limitations when relied upon as the primary governance mechanism for boundary fences:

**1. Tort law is reactive, not preventive.**

It provides remedies only after harm occurs, offering no framework for preventing disputes through notice, consultation, or negotiated coordination (Ben-Shahar & Porat, 2017).

**2. Tort litigation is costly and adversarial.**

Legal proceedings often exceed the value of the disputed structure, creating access-to-justice barriers and fuelling interpersonal hostility (Morgan, 2010).

**3. Tort outcomes lack general applicability.**

Judicial decisions resolve individual disputes but do not create general rules for neighbour relations, leaving homeowners uncertain about their obligations (Lee, 2020).

**4. The fact-specific nature of tort claims leads to inconsistent outcomes.**

Variations in judicial interpretation contribute to doctrinal unpredictability.

**5. Tort law operates without institutional support.**

There are no administrative or tribunal mechanisms to facilitate early resolution, unlike the structured systems found in the UK, Australia, or Singapore (Baldwin, Cave, & Lodge, 2012).

### **Socio-Legal Implications**

Socio-legal scholars note that reliance on tort law for boundary disputes places an unrealistic burden on private individuals to resolve interpersonal conflicts through adversarial means (Blomley, 2005). Boundary conflicts often involve emotional, relational, and symbolic dimensions, which litigation tends to exacerbate (Low, 2003). In Malaysia's increasingly dense and diverse neighbourhoods, this reliance on tort law without preventive regulatory mechanisms contributes to social friction and undermines neighbourhood cohesion.

## **CONCLUSION**

Tort law provides essential but limited remedies for boundary fence disputes. While it protects proprietary rights and offers recourse for harm, it does not constitute a comprehensive governance system. Its reactive, adversarial, and costly nature underscores the necessity of a dedicated statutory and administrative framework that incorporates preventive duties, cooperative procedures, and accessible dispute-resolution mechanisms.

### **(d) Judicial Approaches in Case Law**

Judicial decisions in Malaysia demonstrate that courts frequently become the default forum for resolving disputes involving boundary fences, largely because no statutory or administrative mechanism exists to handle such matters at an earlier stage. An examination of case law reveals several recurring themes: strict enforcement



of cadastral boundaries, dependence on common law tort doctrines, limited judicial willingness to articulate broader neighbour-law principles, and recognition of the limitations inherent in the current legal framework.

### (i) Strict Enforcement of Boundary Lines

Malaysian courts take a **strict approach** toward encroachment: any unauthorised physical intrusion beyond the legal boundary—even inadvertent or minor—constitutes actionable trespass. This reflects the Torrens principles embedded in the National Land Code, which emphasise boundary certainty and indefeasibility of title.

In *Sidek bin Haji Muhamad & Ors v Government of the State of Perak* [1982] 1 MLJ 313, the Federal Court affirmed the sanctity of boundary lines by recognising that any occupation beyond a registered boundary undermines the integrity of the land registration system. Although the case concerned governmental occupation, its reasoning has frequently informed private boundary disputes.

Malaysian courts have consistently ordered the removal of structures that intrude even marginally into neighbouring land, underscoring their commitment to certainty in boundary determination (Teo & Khaw, 2012). This strict approach reinforces proprietary rights but also highlights the lack of procedural mechanisms that might prevent encroachment disputes before they arise.

### (ii) Reliance on Nuisance and Trespass for Fence-Related Disputes

Judicial decisions involving boundary fences often engage **private nuisance** when a boundary structure causes damage, blocks light or airflow, creates safety risks, or constitutes an unreasonable interference with neighbouring enjoyment of land. In *Majlis Perbandaran Ampang Jaya v Steven Phoa Cheng Loon & Ors* [2006] 2 MLJ 389, although not a fence case per se, the Federal Court's reasoning on nuisance and structural instability illustrates how courts conceptualise landowner liability for structures affecting neighbouring properties.

When fences cause drainage diversion, soil erosion, or structural degradation, courts assess the reasonableness of the defendant's conduct using common law nuisance principles (Morgan, 2010). However, nuisance claims require detailed evidence and can be unpredictable, reflecting the doctrine's case-specific nature.

Trespass, on the other hand, is invoked where fences are erected over the boundary line. Courts have repeatedly affirmed trespass liability even for minimal encroachments, issuing mandatory injunctions requiring removal (Teo & Khaw, 2012). While this protects titleholders, it is a reactive mechanism that requires litigation—often disproportionate to the scale of the dispute.

### (iii) Equitable Remedies and Judicial Discretion

In some disputes, courts apply principles of equity—such as **injunctive relief, mandatory orders, or damages in lieu of injunctions**—depending on proportionality and hardship. The courts' discretion under equitable principles allows them to tailor remedies to the circumstances, such as granting time extensions for removal or awarding compensation instead of demolition.

However, equitable interventions remain individualised and do not establish general neighbour-law principles. Their discretionary nature, while flexible, creates unpredictability for homeowners seeking clarity on their rights and obligations (Lee, 2020).

### (iv) Recognition of Legal and Institutional Gaps

A number of judgments explicitly acknowledge that the absence of a statutory framework complicates boundary-fence disputes. Courts have noted that the National Land Code regulates cadastral boundaries but offers no guidance on physical structures, forcing judges to rely on case-by-case common law reasoning (Sihombing, 2005; Teo & Khaw, 2012).

Judges frequently emphasise that local authorities do not have jurisdiction over the relational aspects of fence construction, reinforcing the notion that litigation is often the only available pathway for homeowners. This judicial acknowledgement of regulatory gaps strengthens the argument for statutory reform.

#### **(v) Lack of Preventive or Procedural Standards**

Case law analysis consistently shows that courts address disputes after they have escalated. There is no statutory duty requiring:

- prior notice to neighbours before constructing or altering a boundary fence,
- consent procedures,
- shared-cost rules,
- maintenance responsibilities, or
- administrative dispute resolution.

Courts have no authority to impose such procedural obligations themselves. As scholars have argued, this reflects the limitations of judge-made law in addressing systemic neighbour-relation issues (Ellickson, 1991; Ben-Shahar & Porat, 2017).

## **CONCLUSION**

Overall, Malaysian judicial decisions on boundary fences reflect a legal system that relies heavily on case-by-case adjudication rather than systematic regulation. Courts enforce proprietary rights rigorously, but they cannot fill the structural and relational gaps left by statutory and administrative frameworks. The jurisprudence therefore underscores the need for legislative intervention to provide clearer rules, preventive obligations, and accessible dispute-resolution mechanisms that would reduce reliance on costly litigation.

### **Synthesis of Doctrinal Findings**

The doctrinal analysis of Malaysia's legal framework reveals a systemic and multi-layered gap in the regulation of boundary fences. Although the National Land Code 1965 (NLC) provides a sophisticated system for cadastral boundary determination, it offers no substantive or procedural rules on the construction, placement, maintenance, or legal implications of physical boundary structures. This statutory silence has significant consequences. It renders the physical boundary—represented by fences and walls—functionally detached from the legal boundary, leaving adjoining landowners without statutory duties of notice, consultation, or cooperation. As Malaysian land law scholars note, this disconnect reflects the NLC's historical orientation toward title registration rather than neighbour-relations management (Teo & Khaw, 2012; Sihombing, 2005).

Local authority by-laws, enacted under the Local Government Act 1976 and Street, Drainage and Building Act 1974, partially fill this gap by regulating the technical specifications of fences—height, opacity, materials, and structural safety. However, these by-laws do not regulate interpersonal obligations or prescribe procedures for shared boundary governance. As planning scholars emphasise, these instruments are administrative and structural, not relational (Abdul Aziz, 2014; Ainul Jaria Maidin, 2012). The absence of harmonised national standards and the varying levels of municipal enforcement further contribute to inconsistency across jurisdictions.

In the absence of statutory and administrative regulation, tort law becomes the default governance mechanism. Trespass, nuisance, and negligence provide remedies when fences encroach, interfere with enjoyment, or cause physical damage. Yet these doctrines are inherently reactive and highly individualised, offering post-dispute

remedies rather than guiding neighbour conduct *ex ante* (Morgan, 2010; Lee, 2020). Litigation, often costly and adversarial, becomes the primary mode of resolution, even for minor disputes. Socio-legal research suggests that adversarial processes intensify neighbour conflict, particularly where emotional and symbolic dimensions are involved (Blomley, 2005; Low, 2003).

Judicial decisions further confirm the doctrinal inadequacy of the current framework. Courts consistently enforce boundaries strictly and apply common law tort doctrines but repeatedly acknowledge they lack statutory guidance to address the relational complexities of shared boundary spaces (Teo & Khaw, 2012). Case law thus resolves disputes on a piecemeal basis without creating generalisable principles. The judiciary is structurally ill-positioned to develop a coherent neighbour-law regime because these issues require legislative and administrative design, not case-by-case adjudication.

Taken together, the doctrinal findings reveal three interlocking deficiencies:

### 1. Substantive gaps

- No legal rights or duties governing fence construction, consultation, cost-sharing, or maintenance.
- No statutory recognition of boundary fences as shared structures.

### 2. Procedural gaps

- No notice or consent requirements.
- No administrative pathways for early dispute resolution.

### Institutional gaps

- No lead agency responsible for boundary fence governance.
- Fragmented mandates between land offices, local councils, and the courts.

The result is a fragmented, reactive, and homeowner-driven governance system that depends excessively on private negotiation and litigation. This doctrinal vacuum stands in stark contrast to the comprehensive and preventive frameworks found in other common law jurisdictions, where neighbour-law statutes impose clear duties, procedures, and dispute-resolution mechanisms (Baldwin, Cave, & Lodge, 2012; Ellickson, 1991).

This synthesis underscores the need for a more coherent and integrated regulatory framework in Malaysia that bridges the gap between cadastral boundaries and their physical manifestations and provides homeowners with clear, fair, and predictable mechanisms for managing shared boundary spaces.

## Governance Analysis: Fragmentation and Institutional Failure

### Fragmentation of Institutional Mandates

The governance of boundary fences in Malaysia is characterised by fragmented institutional mandates, where responsibilities are dispersed across multiple agencies—none of which possesses comprehensive authority over boundary fence regulation. This fragmentation is a structural consequence of Malaysia's land administration system, in which cadastral boundaries, physical structures, planning controls, and neighbour disputes fall within the jurisdiction of different bodies operating under different statutes. Governance scholars observe that when regulatory functions are distributed without clear coordination, systems tend to experience gaps, overlaps, and inefficiencies (Baldwin, Cave, & Lodge, 2012; Lodge & Wegrich, 2014).

#### (a) Land Offices and JUPEM: Authority Over Legal Boundaries, Not Physical Structures

The Land Administrator and Department of Survey and Mapping Malaysia (JUPEM) are responsible for land registration, cadastral surveys, and boundary ascertainment under the National Land Code 1965. Their mandate extends to determining the legal boundary line and addressing disputes regarding boundary accuracy through statutory boundary inquiries. However, their authority does not extend to regulating the construction, placement, or maintenance of physical boundary structures such as fences and walls (Teo & Khaw, 2012; Sihombing, 2005). Consequently, when physical fences become sources of dispute—even when placed inaccurately—land offices routinely direct complainants to pursue private remedies or seek judicial intervention.

This institutional limitation creates a disconnect between cadastral certainty and physical occupation. Although JUPEM can confirm whether a fence is off-boundary, it has no power to order its removal, repair, or relocation. This undermines the practical utility of cadastral precision and leaves enforcement entirely to private parties—a pattern noted by property governance scholars as indicative of ineffective institutional design (Ostrom, 1990; Baldwin et al., 2012).

### **(b) Local Authorities: Control Over Building Standards, Not Neighbour Relations**

Local councils exercise authority over building control and planning regulation under the Local Government Act 1976 and Street, Drainage and Building Act 1974, often through subsidiary legislation such as the Uniform Building By-Laws 1984 and municipal guidelines. Their responsibilities include approving plans, regulating heights and materials of boundary structures, and ensuring compliance with safety and aesthetic standards (Abdul Aziz, 2014). However, local authorities do not govern relational duties between neighbours. They have no statutory power to require owner-to-owner consultation, adjudicate disputes, or determine shared maintenance obligations.

This omission is significant. Despite regulating the physical specifications of fences, local authorities disavow involvement in disputes between private landowners, frequently advising them to seek civil remedies. The result is a regulatory system that controls the form of boundary fences but not the relationships or conflicts that arise around them—a pattern consistent with what administrative law scholars describe as “function-specific governance gaps” (Lodge & Wegrich, 2014).

### **(c) The Courts: Dispute Resolution Without Preventive Mechanisms**

The courts function as the final arbiter of boundary fence disputes, primarily through tort-based actions in trespass, nuisance, and negligence. Judicial reasoning has recognised that the absence of statutory guidance places courts in the position of resolving interpersonal conflicts through reactive litigation rather than preventive governance (Lee, 2020). Although courts can order removal of encroachments or award damages, they do not have jurisdiction to prescribe procedural obligations such as notice, joint decision-making, or cost-sharing—mechanisms that are essential features of boundary fence legislation in other common law jurisdictions (Ellickson, 1991; Ben-Shahar & Porat, 2017).

This reliance on judicial intervention as the sole dispute-resolution pathway reinforces the adversarial nature of neighbour relations and places significant pressure on the judiciary to resolve matters that would be better addressed administratively.

### **(d) Absence of a Lead Agency**

Crucially, Malaysia lacks a lead agency responsible for boundary fence governance. Land offices govern cadastral boundaries; local councils regulate technical aspects of fences; survey departments certify boundary lines; and courts resolve disputes. No institution coordinates these functions. Governance literature identifies such situations—where multiple bodies possess fragmented authority but no body possesses full authority—as classic cases of “institutional voids” (Hajer, 2003; Baldwin et al., 2012). These voids result in regulatory grey zones where no entity feels responsible for addressing emerging problems.

### **(e) Consequences of Fragmentation**

This institutional fragmentation produces several practical consequences:



- Homeowners lack clear guidance on rights and obligations.
- Administrative responses are inconsistent, depending on jurisdiction.
- Enforcement is weak because no agency views boundary fences as within its mandate.
- Disputes escalate unnecessarily, often culminating in costly litigation.
- Preventive governance mechanisms are absent, allowing small issues to become major conflicts.

These consequences reflect the broader principle that effective property governance requires institutional clarity and coordination, particularly where boundaries affect both proprietary and relational interests (Ostrom, 1990; Baldwin et al., 2012).

### **Coordination Challenges Between Institutions**

The fragmentation of institutional mandates in Malaysia's boundary fence governance is compounded by persistent coordination challenges between the key agencies responsible for land, building, and dispute management. Coordination failures arise both horizontally (between agencies at the same level of government) and vertically (between federal, state, and local authorities). Governance scholarship emphasises that when regulatory responsibilities require inter-agency cooperation, the absence of shared standards, clear procedural interfaces, or coordinated enforcement strategies often results in regulatory incoherence and institutional inertia (Baldwin, Cave, & Lodge, 2012; Lodge & Wegrich, 2014).

#### **(a) Horizontal Coordination Failures**

Horizontally, land offices, survey authorities, and local councils operate within parallel but isolated regulatory domains, with minimal mechanisms for collaboration. Each agency performs a component of boundary governance but lacks the institutional mandate or procedural protocols to work together.

For example:

- Land offices and JUPEM determine cadastral boundaries but do not communicate systematically with local councils about off-boundary or improperly placed fences.
- Local councils enforce building by-laws but do not require cadastral verification before approving fence construction or rebuilding.
- Courts decide disputes without receiving administrative input from local authorities or land offices regarding technical aspects of the boundary or physical fence compliance.

These siloed operating patterns reflect what governance scholars describe as “compartmentalisation,” which occurs when agencies adhere to narrow statutory mandates and lack incentives to engage in cross-sector coordination (Lodge & Wegrich, 2014). As a result, no single institution possesses a complete picture of boundary fence issues, and each agency acts only within its limited field of vision.

#### **(b) Vertical Coordination Failures**

Vertically, coordination challenges emerge because Malaysia's land system is governed at both **state** (land administration) and local (building regulation) levels, while federal planning laws frame certain baseline requirements. This multi-layered structure creates regulatory interfaces that are poorly integrated.

Examples include:

- State land authorities determine boundary lines, but local councils set rules for fence construction—yet the two systems do not interact.
- Federal-level by-laws (UBBL 1984) are adopted inconsistently by local councils, leading to variations in implementation and enforcement quality.
- Judicial decisions often require administrative actions (e.g., clarifying boundary lines), but courts have no mechanism to compel inter-agency coordination or information sharing.

Scholars of multi-level governance note that such vertical misalignments are common in systems where state and local authorities share overlapping but disconnected regulatory responsibilities (Hajer, 2003; Peters & Pierre, 2004). Without a coordinating body or shared operational framework, vertical gaps persist, producing uncertainty and inconsistent homeowner experiences across jurisdictions.

### **(c) Absence of Shared Procedures and Inter-Agency Protocols**

Malaysia lacks formal procedures that define how agencies should respond collectively to boundary fence issues. There are no protocols for:

- inter-agency notification when a boundary inspection reveals fence-related disputes;
- joint investigations between land offices and local councils;
- coordination between building inspectors and cadastral surveyors;
- administrative referral pathways before disputes escalate to court;
- integrated databases linking cadastral information with building regulation enforcement.

The absence of such coordination tools is a hallmark of what institutional theorists describe as “governance without integration,” where agencies operate with procedural autonomy but collectively fail to produce coherent outcomes (Baldwin et al., 2012).

### **(d) Consequences of Coordination Failures**

The practical implications for homeowners include:

- Conflicting advice from different agencies (e.g., land offices directing parties to local councils, and local councils directing parties back to civil litigation).
- Inefficient dispute handling, with no pre-litigation administrative pathway.
- Inconsistent enforcement, with some councils enforcing fence guidelines strictly while others treat them as advisory.
- Delays in resolution, as disputes move slowly between agencies before eventually reaching the courts.
- Lack of preventive oversight, since no agency feels responsible for early detection or intervention.

These challenges reflect the broader governance principle that fragmentation without coordination produces regulatory gaps and weakens institutional capacity (Lodge & Wegrich, 2014).

### **(e) Comparative Insight: Foreign Jurisdictions Overcome These Challenges**

Comparative research demonstrates that jurisdictions such as the United Kingdom, Australia, and Hong Kong avoid similar coordination failures by establishing:

- clear statutory duties requiring inter-agency referrals;
- administrative tribunals with jurisdiction over neighbour disputes;
- surveyor-based systems (e.g., UK's Party Wall surveyors) that bridge technical and relational aspects;
- uniform legislation adopted consistently across local authorities.

Their experience suggests that effective boundary governance requires procedural integration, institutional coordination, and centralised rule-making—all of which are currently absent in Malaysia.

Coordination challenges between Malaysian institutions significantly undermine the ability of the existing legal framework to manage boundary fences effectively. Fragmentation, siloed mandates, and the absence of inter-agency communication channels leave homeowners without coherent support, promote reliance on litigation, and contribute to inconsistent governance outcomes. These findings underscore the necessity of developing a more integrated, collaborative regulatory system supported by clear statutory standards and unified institutional responsibilities.

### **Consequences of Governance Failures**

The fragmentation of institutional mandates and the chronic lack of coordination among Malaysian authorities produce significant and wide-ranging consequences for homeowners, neighbourhoods, and the broader land governance system. These consequences manifest legally, administratively, socially, and economically. Governance scholars emphasise that when regulatory systems are structurally under-designed or poorly integrated, the resulting governance failures create uncertainty, increase compliance costs, and undermine public trust (Baldwin, Cave, & Lodge, 2012; Lodge & Wegrich, 2014). Malaysia's boundary fence governance exhibits all of these symptoms.

#### **(a) Regulatory Uncertainty and Inconsistent Enforcement**

Because no single agency has comprehensive authority over boundary fences, homeowners receive conflicting advice from different institutions. Land offices commonly disclaim jurisdiction and direct complainants to local councils; local councils, in turn, assert that fence disputes are private matters governed by civil law; while the police routinely classify such disputes as non-criminal and outside their jurisdiction.

This institutional ambiguity leaves homeowners unclear about:

- what types of fences are legally permissible,
- whether neighbour consent is required,
- who bears responsibility for maintenance or repair,
- which authority can intervene in disputes, and
- when court action is necessary.

The lack of uniformity also means that enforcement varies significantly between local authorities, with some municipalities actively enforcing fence-height limits while others treat guidelines as advisory. Such inconsistency is a hallmark of regulatory incoherence, a well-documented outcome of fragmented governance systems (Lodge & Wegrich, 2014).

### **(b) Escalation of Minor Disputes Into Litigation**

Without preventive mechanisms—such as notice requirements, administrative mediation, or statutory cost-sharing rules—boundary fence disagreements frequently escalate into costly litigation. Tort-based claims in trespass or nuisance are often disproportionate to the economic value of the disputed fence, yet they remain the only legal avenue available to homeowners seeking authoritative resolution.

Litigation imposes:

- significant financial costs,
- delays due to court backlogs,
- emotional strain, and
- long-term deterioration of neighbour relationships.

Socio-legal research consistently shows that adversarial court processes exacerbate interpersonal conflicts, especially within residential settings (Blomley, 2005; Low, 2003). The absence of accessible, low-cost, early-stage dispute-resolution mechanisms therefore contributes directly to unnecessary escalation.

### **(c) Reinforcement of Inequalities and Power Imbalances**

In governance gaps, disputes are often resolved through private bargaining, but private ordering is not equally accessible to all parties. Wealthier or more assertive homeowners may exert disproportionate influence over fence decisions, while more vulnerable individuals—such as tenants, elderly residents, single parents, or low-income households—may lack bargaining power.

Ellickson's theory of social ordering demonstrates that informal norms work efficiently only in socially cohesive, homogeneous communities; they fail in diverse or high-density neighbourhoods where relationships among neighbours are weak (Ellickson, 1991). Malaysia's urban settings—particularly condominiums, terrace housing, and mixed ethnic neighbourhoods—fit the latter profile. Hence, reliance on private ordering amplifies existing social hierarchies rather than producing equitable outcomes.

### **(d) Inefficient Use of Public Resources**

Fragmentation forces multiple agencies to handle isolated components of the same dispute. For example:

- JUPEM may be asked to verify a boundary line.
- The land office may review title documents.
- Local councils may inspect the fence for structural compliance.
- Courts may adjudicate disputes.

This duplication of functions increases administrative workload without producing coherent or efficient governance outcomes. Governance literature describes this as institutional redundancy without integration, where agencies expend resources independently instead of collaboratively (Baldwin et al., 2012).

### **(e) Weak Compliance and Low Deterrence**



Because enforcement of fence regulations is inconsistent, many homeowners do not comply with height limits or planning guidelines. The absence of coordinated enforcement or meaningful penalties creates low deterrence, encouraging:

- over-height fences,
- fully opaque walls in violation of ventilation requirements,
- fences built directly on neighbours' land,
- ad hoc modifications without approval.

Weak enforcement signals that regulations lack legitimacy—a phenomenon widely documented in regulatory theory (Tyler, 2006). Over time, this erodes respect for planning rules more broadly.

#### **(f) Deterioration of Neighbourhood Cohesion and Social Trust**

Boundary fences carry significant symbolic and social meanings. They mark privacy, security, autonomy, and interpersonal boundaries. When disputes arise over fences—often emotionally charged matters—the absence of cooperative or mediated resolution mechanisms fosters resentment, entrenched hostility, and long-term neighbour alienation.

Studies on urban social fragmentation show that persistent, unresolved micro-disputes weaken trust, reduce willingness to cooperate, and diminish the quality of residential life (Low, 2003; Blomley, 2005). In Malaysian neighbourhoods, where population density is increasing and inter-ethnic interactions are sensitive, such conflicts may exacerbate social fissures.

#### **(g) Cumulative System-Level Effects**

Taken together, these consequences result in:

- a reactive governance system, driven by litigation;
- high transaction costs for homeowners;
- administrative inefficiencies for government agencies;
- lack of predictable outcomes; and
- persistent social tension in residential areas.

These cumulative effects illustrate the system-wide impact of Malaysia's governance failure—a regulatory void that neither protects property rights effectively nor promotes cooperative neighbour relations.

#### **Comparative Insights from Foreign Jurisdictions**

##### **United Kingdom: The Party Wall etc. Act 1996**

The United Kingdom's Party Wall etc. Act 1996 offers a highly structured statutory regime for regulating works to shared and boundary structures, and provides a useful comparative model for thinking about boundary fence

governance in Malaysia. Although the Act is not a “fence code” in the strict sense, it regulates party structures on or near the line of junction between properties, including certain garden walls, and thus directly addresses many of the relational and procedural issues that arise between adjoining owners (Party Wall etc. Act 1996, UK).

### (a) Scope and Regulatory Philosophy

The Act applies to three broad categories of work:

1. Works to party walls and party structures shared between properties.
2. Construction of new walls on the line of junction between two pieces of land.
3. Excavation and construction works near adjoining structures within specified distances and depths.

Its underlying philosophy is preventive and procedural: rather than relying on tort or post-hoc litigation, it seeks to avert disputes by requiring formal notice, consultation, and expert determination (Hollington, 2017). This contrasts sharply with Malaysia’s reactive, tort-dominated approach.

### (b) Statutory Notice and Consent Mechanism

A core feature of the Act is its **mandatory notice regime**. A “building owner” wishing to undertake works covered by the Act must serve a written notice on the “adjoining owner” within specified timeframes—typically one or two months before the proposed works. The notice must include sufficient detail of the works, including plans and timing, to allow the adjoining owner to assess potential impact (Party Wall etc. Act 1996, s. 3–6).

The adjoining owner may:

- consent in writing;
- dissent and require the appointment of surveyors; or
- fail to reply, in which case a deemed dispute arises.

This mechanism embeds into law what is completely missing in Malaysia: a clear, mandatory procedure of communication and acknowledgment between neighbours before construction takes place.

### (c) Role of Party Wall Surveyors

When a dispute arises (either expressly or by silence), the Act requires the appointment of party wall surveyors. Either:

- both parties agree on a single surveyor; or
- each party appoints their own, and the two appoint a third surveyor as a “backup” decision-maker.

These surveyors act not as advocates for the appointing party, but as statutory, quasi-judicial decision-makers, owing a duty to the Act rather than to either neighbour (Hollington, 2017). They:

- inspect the properties;
- consider the technical implications of the proposed works;
- determine the manner and timing of execution;
- allocate costs;

- provide for access and protections; and
- resolve any associated disputes.

This expert-based system bridges technical, legal, and relational dimensions of boundary works—something entirely absent in the Malaysian framework, where technical experts (surveyors, engineers) are not embedded in a statutory neighbour-dispute process.

#### **(d) The Party Wall Award**

The surveyors issue a party wall award, which is legally binding unless appealed to the county court within a short time. The award typically specifies:

- the works permitted;
- methods and safeguards;
- rights of access;
- requirements for making good any damage;
- allocation of costs and fees.

This award functions as an administrative, expert determination, giving clarity to both parties and reducing reliance on conventional litigation (Glover, 2011). It is a concrete example of preventive, structured governance rather than ad hoc dispute resolution.

#### **(e) Rights of Access and Protection of Adjoining Property**

The Act grants the building owner statutory rights of access to the adjoining owner's land where reasonably necessary to carry out the works, subject to notice and reasonable conditions (Party Wall etc. Act 1996, s. 8). The surveyor(s) can regulate how access is exercised and ensure that appropriate protections and reinstatement obligations are imposed. This legal structure recognises that boundary-related works often require temporary intrusion into a neighbour's airspace or land, and manages it in a controlled, rights-and-duties framework.

In Malaysia, by contrast, any entry onto neighbouring land for fence construction risks being characterised as trespass, absent clear agreement. The UK model shows how a statute can legitimise and discipline necessary intrusions through explicit, balanced rules.

#### **(f) Dispute Resolution and Limited Court Role**

The Act provides a self-contained dispute resolution process:

1. Notice and opportunity for consent.
2. Expert determination by surveyors.
3. Binding award.
4. Limited right of appeal on points of law.

This drastically reduces the need for full court trials, lowers costs, and shortens timelines. Courts retain a supervisory, not primary, role. Comparative scholars highlight this as a classic example of “responsive regulation” where expert bodies and statutory processes manage day-to-day conflicts, leaving courts as backstops (Baldwin, Cave, & Lodge, 2012).

### **(g) Strengths and Limitations**

Key strengths of the UK model include:

- Clear statutory duties (notice, consent, dispute procedures).
- Neutral expertise through surveyors.
- Accessibility and relative speed compared to litigation.
- Balanced protection of both building and adjoining owners.
- Nationwide uniformity in England and Wales.

However, limitations also exist:

- The scheme can be technically complex for laypersons.
- Surveyor fees may be significant in contentious or complex works.
- The Act's focus is on walls and structural works, not on all forms of fencing.

Even so, as a model of neighbour governance, it offers a rich template.

### **(h) Lessons for Malaysia**

Several lessons emerge for Malaysian boundary fence reform:

1. Proceduralisation of neighbour relations – The UK model shows the value of embedding mandatory notice, consultation, and structured disagreement procedures into statute.
2. Expert-driven dispute resolution – Integrating surveyors or technical experts into the process allows disputes to be resolved with both legal and engineering competence.
3. Administrative awards over full litigation – A binding “award” mechanism could relieve Malaysian courts and reduce the cost and hostility of neighbour disputes.
4. Recognising shared boundary structures as a special category – The Act treats party structures as a distinct regulatory object requiring special rules; a Malaysian Boundary Fences or Neighbour Boundaries Act could do the same.
5. Nationwide coherence with local implementation – A federal statute, applied consistently but administered locally, could overcome the current patchwork of by-laws and practices.

In sum, the Party Wall etc. Act 1996 illustrates that neighbour relations around boundaries can be governed proactively and cooperatively, rather than left to private bargaining and tort litigation. While the Act cannot be transplanted wholesale, its procedural logic and institutional design provide compelling guidance for Malaysian reform.

The United Kingdom's Party Wall etc. Act 1996 demonstrates how a clear statutory framework can transform neighbour relations by shifting governance from a reactive, litigation-driven model to a proactive, procedure-driven one. Yet, the UK regime focuses primarily on party walls and structural works rather than everyday boundary fences. To appreciate how jurisdictions regulate fences specifically, a broader comparative perspective is needed. Australia offers one of the most comprehensive and longstanding models of boundary fence regulation across multiple states and territories. Unlike the UK's surveyor-led process, Australian Dividing Fences Acts



emphasise cost-sharing, notice requirements, maintenance obligations, and low-cost dispute resolution, providing an alternative paradigm for managing neighbour interactions. Together, these jurisdictions illustrate different regulatory philosophies—expert-driven (UK) versus community-based and administratively facilitated (Australia)—both of which highlight the deficiencies of Malaysia’s current fragmented framework and offer concrete directions for reform.

### **Australia: Dividing Fences Acts**

Australia provides one of the clearest and most developed statutory models for the regulation of boundary fences through a series of Dividing Fences Acts enacted in various states and territories (e.g., Dividing Fences Act 1991 (NSW), Fences Act 1968 (Vic), Dividing Fences Act 1961 (WA)). Although the details vary, these statutes share a common regulatory philosophy: they treat boundary fences as shared structures and expressly regulate the rights, duties, and dispute-resolution mechanisms between adjoining landowners. This offers a sharp contrast to Malaysia’s reliance on private ordering and tort law, and provides valuable comparative insights.

#### **(a) Shared Responsibility and the Concept of “Sufficient Fence”**

At the heart of Australian dividing-fence legislation is the notion that a boundary fence is ordinarily a joint responsibility of the adjoining owners. Each statute defines or permits the determination of a “sufficient fence” – a fence considered adequate for the locality, the nature of the land, and the purpose of the properties (Edgeworth, Rossiter, & O’Connor, 2019). Where no particular fence is prescribed, sufficiency is often determined by local standards or by agreement between neighbours.

The statutes generally provide that:

- adjoining owners are liable in equal shares for the cost of constructing a sufficient dividing fence (unless circumstances justify a different apportionment);
- where one owner wants a fence of a higher standard than is considered “sufficient”, they must bear the additional cost;
- obligations extend to repair and replacement, not only initial construction.

This approach explicitly recognises the relational nature of boundary fences and allocates financial responsibility through clear statutory presumptions, a feature entirely absent in the Malaysian framework.

#### **(b) Notice and Consultation Requirements**

Australian Acts embed procedural obligations that structure neighbour interactions. Typically, an owner proposing to construct or repair a dividing fence must serve a “fencing notice” on the adjoining owner, specifying:

- the type and standard of fence proposed;
- estimated costs and the apportionment of those costs;
- proposed timing for the works.

The adjoining owner may agree, negotiate, or object. If no agreement is reached, the matter can be referred to a local court or tribunal for determination (Edgeworth et al., 2019; Bradbrook, MacCallum, & Moore, 2011). These notice and consultation requirements ensure that decisions about boundary fences occur within a structured legal framework, rather than being left to informal and potentially conflictual negotiation.

#### **(c) Maintenance and Repair Duties**

Dividing Fences Acts also codify ongoing maintenance obligations. Neighbours must share the reasonable cost of maintaining a sufficient fence in good repair. If one owner neglects their responsibilities, the other may carry out the necessary works after proper notice and recover a proportion of the costs through statutory procedures.

This is particularly important because many disputes arise not from initial construction, but from deteriorating fences, unilateral repairs, or replacement without consultation. By regulating maintenance explicitly, Australian statutes acknowledge the long-term lifecycle of boundary fences.

#### **(d) Accessible Dispute Resolution Mechanisms**

A key strength of the Australian model is its provision for accessible, low-cost dispute resolution. Disagreements about:

- whether a fence is “sufficient”,
- the type of fence required,
- cost-sharing proportions, or
- responsibility for damage

may be referred to local magistrates’ courts, civil and administrative tribunals (such as the NSW Civil and Administrative Tribunal), or equivalent bodies, depending on the state. These bodies offer simplified procedures, lower costs, and faster resolution than full civil litigation (Bradbrook et al., 2011).

This tribunal-based model illustrates that boundary disputes need not be resolved exclusively through high-cost, adversarial litigation, but can instead be managed by specialised or lower-tier institutions.

#### **(e) Integration with Planning and Local Conditions**

Although Dividing Fences Acts operate at the state level, they often allow or require reference to local planning instruments or local council guidelines when determining what constitutes a sufficient fence. In this way, the statutory regime balances state-wide legal clarity with local adaptability, ensuring that standards reflect neighbourhood character, zoning, or environmental conditions (Edgeworth et al., 2019).

This integrated approach is instructive for Malaysia, where local by-laws currently regulate fence form but not neighbour relations. An Australian-style model would allow Malaysia to combine national-level principles with localised technical standards, administered in a coherent fashion.

#### **(f) Strengths and Weaknesses of the Australian Model**

Key strengths include:

- Clear articulation of shared financial responsibility (presumptive equal cost-sharing).
- Embedded notice and consultation procedures, which reduce surprise and promote dialogue.
- Codified maintenance obligations, addressing the full lifecycle of fences.
- Accessible, low-cost dispute resolution forums.
- Flexibility to adapt standards to local conditions.

However, commentators also note challenges:

- Fencing disputes still arise where parties are uncooperative or misunderstand their rights (Edgeworth et al., 2019).
- Legal complexity can exist in special contexts (e.g., rural land, different utility of fencing).
- Some owners may remain unaware of their statutory rights or obligations.

Nonetheless, as a regulatory template, the Dividing Fences Acts represent one of the most coherent approaches to neighbour fence governance in the common law world.

### **(g) Lessons for Malaysia**

From the Australian experience, several lessons emerge for Malaysian reform:

1. Statutory recognition of boundary fences as shared structures – Boundary fences should be treated as a joint responsibility of adjoining owners, subject to statutory presumptions and exceptions.
2. Clear cost-sharing and maintenance rules – Default rules on construction and repair costs would greatly reduce uncertainty and conflict.
3. Mandatory notice and consultation procedures – A statutory “fencing notice” system could ensure that neighbours are informed and can negotiate before works begin.
4. Tribunal or local court jurisdiction for boundary fence disputes – Designated, low-cost forums could handle boundary issues more efficiently than full civil litigation.
5. Integration with local technical regulation – National-level principles can coexist with local authority by-laws on height, materials, and aesthetics, provided roles are clearly delineated.

In sum, the Australian Dividing Fences Acts demonstrate that boundary fence governance can be structured around shared responsibilities, procedural clarity, and accessible dispute resolution, offering a strong comparative model for Malaysia’s prospective reforms.

While Australia’s Dividing Fences Acts illustrate how legislatures can structure neighbour relations through shared responsibilities, notice procedures, and accessible dispute-resolution mechanisms, they operate within a context of predominantly low- to medium-density suburban housing. By contrast, Singapore presents a different regulatory paradigm, one shaped by high-density urban living, a strong central planning authority, and comprehensive building control systems. Singapore does not adopt a dedicated “dividing fences” statute; instead, boundary management is embedded within broader planning, building, and strata governance frameworks, administered by highly coordinated agencies such as the Building and Construction Authority (BCA), Urban Redevelopment Authority (URA), and municipal councils. This integrated regulatory environment offers a model of centralised, preventive planning control—distinct from both the expert-driven UK regime and the procedurally structured Australian model. Together, these jurisdictions showcase three different governance philosophies, each illuminating the deficiencies and reform possibilities for Malaysia’s fragmented boundary fence framework.

### **New Zealand: The Fencing Act 1978**

New Zealand’s Fencing Act 1978 provides a clear and structured statutory regime governing boundary fences, building upon principles similar to Australia’s Dividing Fences Acts while introducing additional procedural and relational mechanisms. The Act expressly recognises boundary fences as shared structures, and codifies the rights and duties of adjoining owners in relation to construction, repair, replacement, cost-sharing, and dispute resolution. Its straightforward, accessible, and homeowner-oriented framework offers another instructive model for potential Malaysian reform.

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### **(a) Statutory Recognition of Shared Responsibility**

The Fencing Act 1978 begins from a foundational premise: adjoining occupiers share equal responsibility for an adequate boundary fence, unless circumstances justify a different allocation. Section 9 establishes a presumption of equal sharing of costs, which can be adjusted based on:

- differing uses of the properties,
- differing needs (e.g., security, containment of animals),
- whether one party benefits substantially more from the fence.

This flexible cost-sharing mechanism recognises that equity, rather than strict equality, should guide allocation — a principle absent in the Malaysian context, where no legal framework addresses shared responsibilities at all.

Scholars of New Zealand property law note that the Act reflects a pragmatic, community-oriented approach to neighbour relations (Toomey, 2017), balancing individual autonomy with reciprocal obligations.

### **(b) The “Fencing Notice” Procedure**

Similar to Australian legislation, the Act contains a structured notice-and-response system. A party wishing to build or repair a boundary fence must serve a fencing notice on the adjoining occupier (ss. 10–12), detailing:

- the type of fence proposed,
- construction materials,
- estimated cost and apportionment,
- intended timelines, and
- justification for the proposal.

The adjoining owner may:

- agree,
- negotiate different terms, or
- issue a cross-notice objecting to the proposal.

If no agreement is reached, the matter may proceed to the District Court, which resolves disputes through simplified procedures tailored for neighbour matters.

This formalised process embeds communication, transparency, and accountability directly into the statutory framework, avoiding the informal and often adversarial negotiations seen in Malaysia.

### **(c) Flexible Concept of “Adequate Fence”**

Section 2 defines an “adequate fence” as one that is reasonably satisfactory for the purpose it serves, considering:

- the nature of the land,

- the location and neighbourhood character,
- local conditions, and
- any relevant bylaws or regulations.

The Act thereby allows local context to inform statutory obligations, acknowledging that fencing needs differ between:

- suburban residential areas,
- rural farms,
- commercial properties, or
- mixed-use areas.

This flexibility is particularly relevant to Malaysia, where urban and semi-rural environments often coexist within the same municipalities, yet no statutory guidance differentiates fencing needs across land types.

#### **(d) Damage, Neglect, and Liability**

The Act imposes statutory duties regarding maintenance and repair. If a fence is damaged (by weather events, neglect, or actions of one party), the responsible party may be required to bear a larger share — or all — of the repair cost (s. 17). Scholars note that this strengthens accountability and reduces the incentive for neglect (Toomey, 2017).

Malaysia currently lacks such rules, meaning disputes over damaged fences often escalate to tort claims in nuisance or negligence, even when a simple statutory mechanism could have resolved the issue.

#### **(e) Cost Recovery Without Litigation**

The Fencing Act includes a practical mechanism that allows a party who unilaterally undertakes construction or repair (after proper notice) to recover the adjoining owner's share of costs as a debt (s. 24). This allows homeowners to resolve matters efficiently without immediate recourse to litigation.

Where disputes do arise, the Act grants the District Court jurisdiction to determine:

- what constitutes an adequate fence,
- how costs should be apportioned,
- timing and methods of construction, and
- ancillary issues such as access to adjoining land.

The streamlined nature of District Court proceedings makes them faster and less adversarial compared to full civil litigation.

#### **(f) Strengths and Weaknesses of the New Zealand Model**

Strengths:

- Clear statutory articulation of shared responsibilities.



- Structured communication through fencing notices and cross-notices.
- Procedural fairness built into the decision-making process.
- Flexible standards adaptable to local conditions.
- Low-cost dispute resolution mechanisms.
- Efficient cost-recovery provisions that reduce litigation.

#### **Weaknesses:**

- Some complexity in rural versus urban application.
- Occasional disputes about what constitutes “adequate” fencing.
- Some technical aspects may require professional input (surveyors, builders).

Nonetheless, the Act is internationally recognised for its clarity, accessibility, and effectiveness in reducing neighbour conflict.

#### **(g) Lessons for Malaysia**

New Zealand’s model demonstrates several important design principles Malaysia could adopt:

1. Statutory cost-sharing as a default rule.
2. Formal notice procedures to structure neighbour communication.
3. Definition of an “adequate” boundary fence adapted to local authority guidelines.
4. Maintenance and damage duties grounded in fairness.
5. Streamlined court processes for minor fence-related disputes.
6. Legal recognition of neighbour relationships as a relevant dimension of property governance.

Taken together, these principles illustrate how a clear statutory scheme can reduce conflict, improve fairness, and provide predictable outcomes — all of which are missing from Malaysia’s current fragmented and reactive governance framework.

#### **Synthesis of Comparative Lessons**

The comparative analysis of the United Kingdom, Australia, and New Zealand reveals three distinct yet complementary governance philosophies for managing boundary structures. Together, these jurisdictions illustrate how statutory clarity, procedural safeguards, and institutional design can transform neighbour relations from contentious private negotiation into predictable, fair, and cooperative processes. The lessons drawn from these systems illuminate the deficiencies in Malaysia’s current framework while offering concrete principles that can guide reform.

#### **(a) Boundary Structures Require Dedicated Legal Attention**

A common feature across all three jurisdictions is the statutory recognition of boundary structures as a unique class of property-related objects requiring bespoke regulation. The UK regulates party walls and line-of-junction structures; Australia and New Zealand regulate dividing fences. Each system acknowledges that boundary

structures generate recurrent neighbour disputes that cannot be adequately managed through general tort doctrines or general land law.

By contrast, Malaysia treats boundary fences as private matters governed by ad hoc negotiation and tort remedies. The absence of statutory attention to fences as a specific regulatory object leaves homeowners without clear rights and duties, leading to uncertainty, inconsistent outcomes, and conflict escalation. The comparative lesson is clear: boundary structures must be recognised in statute as shared or relational objects with dedicated rules and procedures.

### **(b) Proceduralisation Is Essential for Peaceful Neighbour Relations**

All three jurisdictions embed mandatory procedural mechanisms into the law:

- United Kingdom: statutory notices, surveyor appointments, binding awards.
- Australia: fencing notices, cross-notices, statutory timelines.
- New Zealand: fencing notices, objections, simplified District Court procedures.

These procedures serve several purposes:

- Create transparency and predictability.
- Ensure neighbours communicate before works begin.
- Reduce opportunities for misunderstanding.
- Provide structured pathways for consent and disagreement.
- Prevent disputes from escalating into litigation.

Malaysia lacks any such proceduralisation. Fence construction and repair typically occur without notice, often triggering surprise, resentment, or allegations of trespass. The lesson is that structured communication must be legally mandated, not left to social norms or goodwill.

### **(c) Shared Responsibility and Clear Cost-Sharing Rules Promote Fairness**

Australia and New Zealand adopt a presumptive rule of equal cost-sharing, subject to equitable adjustments. These jurisdictions explicitly recognise that boundary fences serve both properties and therefore represent a common benefit. These statutory presumptions:

- reduce uncertainty about financial obligations;
- eliminate bargaining power disparities;
- prevent opportunistic refusal to contribute;
- embed fairness into neighbour relations.

Malaysia, by contrast, provides no guidance on who should pay for construction, replacement, or repair, leaving resourceful or assertive neighbours in stronger positions. The comparative insight is that statutory allocation of financial responsibility is fundamental to reducing disputes.

### **(d) Integration of Technical Expertise in Dispute Resolution**

The UK's surveyor-based system and Australia/New Zealand's tribunal processes highlight the value of technical expertise in resolving boundary matters. Professionals with surveying, construction, or engineering competence are empowered to:

- design safe and appropriate solutions;
- allocate costs;
- determine construction methods;
- assess property-specific risks.

In Malaysia, courts decide disputes without systematic technical support unless parties hire their own experts. This leads to expense, asymmetric knowledge, and inconsistent outcomes.

The lesson is that Malaysia requires an expert-informed administrative or quasi-judicial mechanism, not reliance solely on adversarial litigation.

#### **(e) Preventive Governance Reduces Litigation and Conflict**

All comparative jurisdictions adopt a prevention-first model:

- disputes are resolved through notice, negotiation, and administrative determination before becoming legal cases;
- courts act only as a final appellate forum or as one option among several;
- early intervention mechanisms reduce hostility and transaction costs.

Malaysia's absence of preventive mechanisms means disputes frequently escalate directly to court, increasing costs, prolonging conflict, and straining neighbour relations.

Comparative evidence thus supports the conclusion that preventive governance mechanisms must be incorporated into any Malaysian reform.

#### **(f) Centralisation of Standards with Local Adaptation Enhances Consistency**

Australia and New Zealand combine uniform statutory principles with localised technical guidelines. The UK integrates technical execution into surveyor awards but maintains national consistency in procedures. This blended approach ensures:

- nationwide clarity about rights and duties;
- adaptability to local conditions (urban, suburban, rural);
- consistency across municipalities;
- coherent enforcement practices.

In Malaysia, local councils regulate fence height and materials, but there is no national framework explaining obligations between neighbours. The result is fragmented regulation and inconsistent experiences across states.

The lesson is that Malaysia needs national-level legal principles, supplemented by local building standards, all integrated into one coherent system.

### **(g) The Holistic Insight: Governance Must Be Both Legal and Relational**

Across all jurisdictions, boundary governance is understood not simply as a matter of property law but as an area requiring:

- legal rules,
- procedural duties,
- technical standards,
- relational obligations, and
- administrative mechanisms.

This multidimensional approach contrasts sharply with Malaysia's reliance on private ordering + tort law, a combination proven ineffective in managing shared boundary spaces.

The comparative synthesis thus affirms that Malaysia must adopt an integrated governance model that is:

- statutory,
- procedural,
- preventive,
- equitable, and
- technically informed.

Such an approach would reduce disputes, enhance neighbourhood cohesion, and align Malaysia with modern property-governance principles in other common law jurisdictions.

### **Implications for Malaysian Policy and Legal Reform**

The combined doctrinal and comparative analyses demonstrate that Malaysia's current framework for boundary fence governance is not merely incomplete—it is structurally incapable of regulating neighbour relations in a predictable, fair, or efficient manner. The governance vacuum, reliance on tort law, and fragmentation across institutions have systemic implications for property rights, social cohesion, and administrative efficiency. Drawing from the legislative philosophies of the United Kingdom, Australia, and New Zealand, several key implications emerge for Malaysian policymaking and legal reform.

#### **(a) Recognition of Boundary Fences as a Distinct Regulatory Category**

The first implication is the need for Malaysia to formally recognise boundary fences as a regulatory object requiring dedicated legal attention. Under current Malaysian law, fences fall into a conceptual grey area: they are neither fully governed by the National Land Code nor comprehensively addressed by local authority by-laws. The comparative jurisdictions treat boundary structures as relational and shared, not merely private objects.

#### **Policy implication:**

A new statutory framework—such as a Boundary Fences Act or Neighbour Boundaries Act—is needed to provide legal clarity and recognise fences as structures that inherently affect multiple properties.

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### **(b) Embedding Procedural Fairness Through Statutory Notice Requirements**

All comparative jurisdictions demonstrate that neighbour disputes can be substantially reduced through statutory proceduralisation, especially mandatory notice and consultation before constructing, repairing, or modifying a boundary fence.

In Malaysia, most disputes arise because one party undertakes unilateral construction without informing the other. Procedural obligations can pre-empt these conflicts.

#### **Policy implication:**

Introduce statutory notice requirements, specifying:

- what information must be provided,
- timelines for response,
- consequences of failure to respond, and
- default mechanisms when neighbours disagree.

This would shift Malaysia from a reactive to a preventive governance model.

### **(c) Establishing Statutory Cost-Sharing and Maintenance Rules**

A major implication for reform is the adoption of clear cost-sharing principles, similar to Australia and New Zealand. Currently, Malaysian law provides no guidance on financial responsibility for construction, repair, or replacement. This places disproportionate burden on negotiation, often favouring stronger parties.

#### **Policy implication:**

Introduce presumptive equal cost-sharing rules, with flexibility for adjustments based on:

- differing uses,
- differing benefits,
- differing needs (e.g., security), and
- circumstances where one party damages the fence.

This would promote fairness and provide predictable standards for homeowners.

### **(d) Creating a Low-Cost, Accessible Dispute Resolution Mechanism**

Malaysia's reliance on full civil litigation to resolve minor fence disputes is inefficient and costly. Comparative models show that tribunals or specialist processes handle these matters more effectively.

#### **Policy implication:**

Establish a Neighbour Dispute Tribunal or grant jurisdiction to existing bodies (e.g., Strata Management Tribunal, local government tribunals) to resolve boundary fence disputes, empowered to:

- determine adequate fence standards,



- allocate costs,
- issue binding orders,
- regulate access for construction/repair.

This could dramatically reduce court caseload and improve public access to justice.

#### **(e) Integrating Technical Expertise Into Governance**

Boundary issues often require technical assessments (e.g., surveying, engineering, construction standards). The absence of built-in expertise contributes to inconsistent outcomes in Malaysia.

Comparative regimes institutionalise expertise through:

- UK's surveyor-based determinations,
- Australia's tribunal inquiries,
- New Zealand's court-supported assessments.

#### **Policy implication:**

Malaysia should integrate surveyors or building professionals into the dispute-resolution process, either as:

- statutory decision-makers,
- technical advisors to tribunals, or
- authorised inspectors.

This would enhance accuracy, fairness, and legitimacy of decisions.

#### **(f) Centralising Principles With Local Implementation**

Another implication is the need for centralised statutory principles with local authority operationalisation, mirroring Australia and New Zealand. Local councils should not be the sole regulators, but should retain authority over technical specifications (height, materials, aesthetics).

#### **Policy implication:**

Adopt a hybrid governance model where:

- the federal/state statute defines rights, duties, and procedures, while
- local authorities retain regulatory power over design and technical standards.

This maintains consistency without disregarding local context.

#### **(g) Reducing Litigation and Promoting Preventive Governance**

The overarching implication is that Malaysia must shift from a litigation-driven to a preventive governance model. Current tort-based pathways escalate conflict, burden courts, and damage neighbour relations.

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### **Policy implication:**

Introduce a multi-layered structure that includes:

1. mandatory notice and consultation,
2. expert-based administrative decision-making,
3. accessible tribunals, and
4. appellate oversight by courts only as a last resort.

This ensures disputes are managed early, cheaply, and efficiently.

### **(h) Strengthening Neighbourhood Cohesion and Social Harmony**

Finally, boundary fence reform is not merely a legal or administrative concern. Poor governance of fences can exacerbate neighbour hostility, erode social trust, and diminish community harmony. Comparative jurisdictions embed relational and cooperative duties into law, recognising the social dimensions of boundaries.

### **Policy implication:**

A Malaysian reform should explicitly aim to:

- reduce neighbour conflict,
- promote communication,
- enhance fairness, and
- support long-term neighbourhood cohesion.

This broader social objective aligns with contemporary property-governance theory, which views neighbour relations as integral to land-use systems.

### **Conclusion of Section 4.5**

The implications from comparative study clearly indicate that Malaysia requires a structured, statutory, preventive, and relational governance framework for boundary fences. Reform is both necessary and feasible, and the experiences of the UK, Australia, and New Zealand provide robust templates for developing a coherent, modern, and socially responsive Malaysian system.

## **CONCLUSION AND RECOMMENDATIONS**

### **Conclusion and Recommendations**

This study has demonstrated that the governance of boundary fences in Malaysia suffers from deep and systemic deficiencies. The doctrinal analysis shows that the National Land Code 1965 does not regulate physical boundary structures, local authority by-laws focus almost exclusively on technical construction parameters, and tort law remains the primary (but limited and reactive) dispute-resolution mechanism. The governance analysis further reveals fragmentation, lack of coordination, institutional voids, and inconsistent enforcement across agencies. As a result, Malaysian homeowners confront uncertainty, escalating disputes, inefficient litigation pathways, and reduced neighbourhood cohesion.

In contrast, the comparative examination of the United Kingdom, Australia, and New Zealand illustrates that boundary governance can be structured in a manner that is predictable, preventive, relational, and institutionally

coherent. These jurisdictions offer practical models for procedural duties, cost-sharing rules, expert-based assessment, and low-cost dispute resolution that are better suited to managing the inherently social and shared nature of boundary structures. The synthesis of lessons from these systems shows that effective boundary governance requires not only legal clarity but also integrated administrative structures and fair procedures that support neighbour cooperation.

To address these gaps and move towards a more coherent regulatory system, the following recommendations are proposed:

### **Enact a Dedicated Malaysian Boundary Fences Act**

Malaysia should adopt a new statute—whether titled Boundary Fences Act, Neighbour Boundaries Act, or similar—that:

- defines the legal status of boundary fences,
- sets out rights and duties between adjoining landowners,
- establishes procedural requirements (notice, consultation, timelines),
- provides mechanisms for cost-sharing,
- clarifies maintenance and repair responsibilities, and
- integrates technical standards with local government by-laws.

This central legislative reform would provide the legal foundation currently missing in Malaysia.

### **Introduce Mandatory Notice and Consultation Procedures**

Statutory procedures based on the UK and Australasian models should require neighbours to:

- provide written notice before constructing, repairing, or altering boundary fences,
- include specifications, cost estimates, and timelines,
- allow for responses, objections, and counter-proposals.

These procedures would prevent surprises, reduce conflict escalation, and introduce fairness into neighbour interactions.

### **Adopt Clear Cost-Sharing Rules with Flexibility for Equity**

Malaysia should adopt a default rule of equal cost-sharing, subject to equitable variation as in Australia and New Zealand, based on:

- differing needs or uses,
- differing benefits,
- fault-based damage,
- special circumstances (e.g., security, safety).

This would resolve one of the most common sources of disputes.

### **Establish a Low-Cost Neighbour Dispute Tribunal**

A specialised tribunal (or expanding the jurisdiction of existing bodies such as the Strata Management Tribunal or Local Government Courts) should be empowered to:

- hear fence-related disputes,
- determine adequate fence standards,
- allocate costs,
- regulate access for construction,
- issue binding orders enforceable like court orders.

This would dramatically reduce the burden on courts and provide homeowners with an accessible, affordable avenue for resolution.

### **Integrate Technical Expertise Into the Decision-Making Process**

Malaysia should incorporate surveyors, engineers, or certified building professionals into statutory procedures, either as:

- expert assessors,
- appointed surveyors (like in the UK),
- tribunal advisors,
- or authorised inspectors.

This ensures decisions reflect both legal and technical competence.

### **Harmonise National Statutory Principles with Local Authority Guidelines**

The national statute should articulate rights, duties, and processes, while delegating to local authorities the power to regulate:

- fence heights,
- materials,
- aesthetic or architectural requirements,
- neighbourhood-specific standards.

This hybrid approach would provide consistency while preserving local flexibility.

## **5.7 Promote Preventive Governance and Neighbourhood Cohesion**

Boundary fence regulation must be seen not merely as a technical matter but as a site of neighbour-relational governance. The law should aim to:

- pre-empt disputes,
- promote communication,
- encourage cooperative behaviour,
- support harmonious community living.

This aligns with modern governance principles recognising that legal frameworks must address both structural and social dimensions of property boundaries.

## Final Reflection

Malaysia now faces an important opportunity. The current framework—fragmented, reactive, and reliant on tort law—does not meet the needs of contemporary housing, urban density, or diverse social environments. A dedicated statutory and administrative framework would not only reduce legal disputes but also enhance fairness, improve access to justice, and strengthen neighbourhood cohesion.

By adopting the preventive, structured, and relational approaches evident in the United Kingdom, Australia, and New Zealand, Malaysia can modernise its boundary fence governance and align property law with the practical realities of neighbour relations in the twenty-first century.

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