



AIDV INTERNATIONAL CONFERENCE

THE JUDGES' SESSION – 1 – 3 OCTOBER 2018

3441-1383-4763v1

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THE JUDGES' SESSION

A USA company is importing German wines into Canada for resale through the USA company's Canadian sub-distributors. There is an exclusive distribution agreement between the German producer and the USA company, which includes minimum annual sales requirements.

The German producer now believes that the USA company is not adequately promoting its wines in Canada, as its sales have been steadily declining over the last 24 months, with the minimum sales requirements not being met.

THE JUDGES' SESSION

- The Germany producer terminates the distribution agreement and demands payment of the amount owing for not meeting the minimum sales requirement over 3 years, namely US\$750,000.
- The US company refuses to pay, and keeps on advertising the German producer's wines in Canada. It also launches in Canada a new range of Napa-sourced wines under the German producer's trade mark.

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- Unsurprisingly the German producer wants both its money and for the trade mark infringement to stop.
- Its demands are ignored so it decides to litigate.
- The trade mark infringement is taking place in Canada but the alleged debt is owed by the US company to a German producer.
- **A key issue is where to launch court proceedings?**

THE JUDGES' SESSION

- Thankfully the in-house General Counsel of the USA company and of the German producer have a cordial relationship and agree that their companies will both respect the decision of whatever court is agreed on by them to have jurisdiction in the dispute.
- They invite a mutual colleague, a Canadian lawyer respected by each of them, to join in the debate as to which court should be chosen as the appropriate forum.

THE JUDGES' SESSION

- The German lawyer starts off by saying “We have the fastest (and naturally the best) legal system, which costs least and will give the right result sooner.”
- So, the gauntlet has been laid down. How could the USA attorney and the Canadian lawyer respond?! They agree that in order to make the decision easier, they should explore some of the facts about each country’s legal system.

WHAT ARE THE USUAL STEPS TAKEN IN LITIGATION IN YOUR COURT?

AUSTRALIA

1. Issue the court documents
2. Serve court documents on defendant
3. Appear in a hearing which fixes a timetable
4. Defence & any Counter-claim are served by the defendant
5. Reply to Defence and Defence to Counter-claim are served by the plaintiff
6. Reply to Defence to counter-claim is served by the defendant
7. Document discovery is made
8. Affidavits (setting out the evidence of each party) are exchanged
9. Trial (hearing) takes place

USA

- A complaint is served.
- A temporary restraining order can be requested at the beginning of the case; decided on written declarations
- Litigation over the sufficiency of the complaint.
- Exchange of initial disclosures by each party.
- Trial setting conference, which establishes the case schedule.
- Formal discovery, including document requests, interrogatories, and depositions.
- Motions for summary judgment (a paper trial).
- Final Pre-Trial Conference.
- Trial.
- All trials for damages in Federal Court must be jury trials. (U.S. const., amendment VII). Injunctions are handled by the judge

GERMANY

Main proceedings

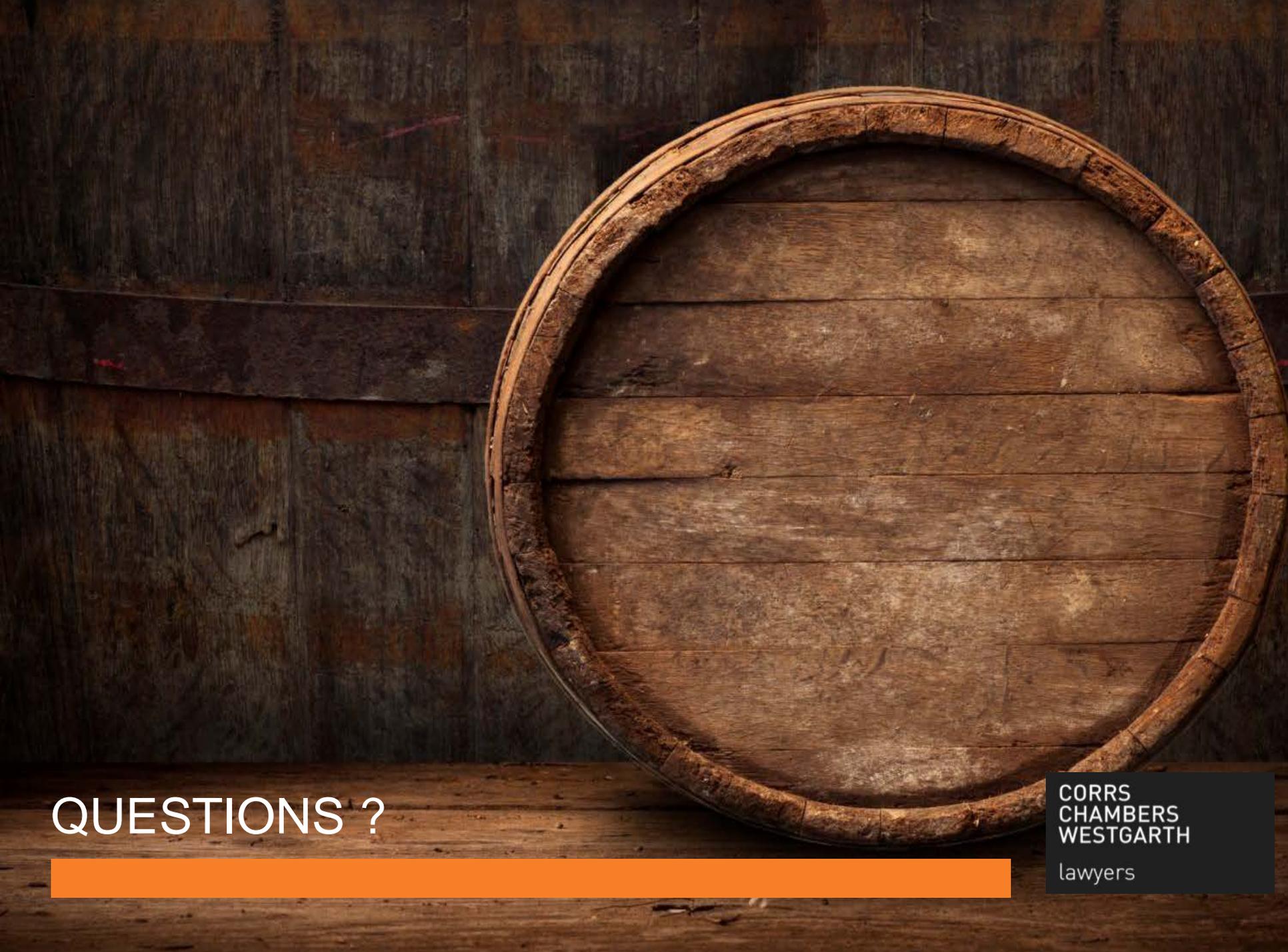
- Statement of Claim
- Assessment of value of dispute by Court
- Invitation of Plaintiff to pay the Court fee according to value of dispute
- Payment of Court fee by Plaintiff
- Decision by Court: early oral court hearing (usually) or written pre-trial procedure
- Summons to oral hearing together with statement of claim of Defendant by Court
- Statement of Defence
- Further written briefs
- Oral Hearing
 - Settlement (>50%)
 - Judgement (49%)
 - Adjournment for fact finding, e.g. hearing of witnesses in Court (1%)

Preliminary Injunction proceedings

- Application for PI
- PI is granted ex parte (40%) and served by Plaintiff on Defendant (defendant can ask for an oral hearing to overturn PI)
- Application for PI is withdrawn after telephone call by presiding judge (50%)
- Date of oral hearing is set (10%)
- Further steps as main proceedings but usually no adjournment and no summons of witnesses by Court (affidavit is sufficient; only witnesses already present in court room may be heard if court time permits so)

CANADA

- Same as Australia with respect to steps 1, 2, 4-9
- Step 3 only taken when case management implemented (most trademark cases of any complexity have)
- Between steps 8 and 9 there is oral discovery and exchanges of agreed statement of fact as well as a pre-trial conference

A large, empty wooden barrel head is the central focus, leaning against a dark, textured wooden wall. The barrel head is made of several horizontal wooden staves, showing signs of age and wear. The background wall is composed of vertical wooden planks, also showing texture and color variations. The lighting is dramatic, highlighting the grain of the wood and the circular shape of the barrel head.

QUESTIONS ?

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