

# Wine industry litigation

COMMERCIAL LAWSUITS arise out of disputes between people, businesses, or other entities, including government entities. Lawsuits generally proceed through distinct steps: pleadings, discovery, trial, and possibly an appeal. However, parties can halt this process by voluntarily settling at any time. Most cases settle before reaching trial. Mediation or a formal court settlement conference is usually desirable before trial.

## PLEADINGS

Each party in a lawsuit files initial papers, known as “pleadings”. The pleadings explain each party’s side of the dispute.

**Statement of Claim:** Litigation begins when the plaintiff files an initiating Summons and Statement of Claim with the court and serves a copy on the defendant.

The Statement of Claim describes what the defendant did (or failed to do) that said to have caused harm to the plaintiff and the legal basis for holding the defendant responsible for that harm.

**The Defence:** The defendant is given a specific amount of time to file a Defence to the Statement of Claim.

The Defence provides the defendant’s side of the dispute.

The defendant may also file Counterclaim (that is, a “cross-claim”) against the plaintiff, alleging that the plaintiff has caused some form of commercial harm to the defendant and should be held liable for that harm.

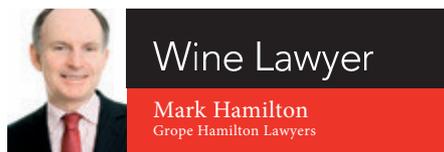
Sometimes, the plaintiff responds to the defendant’s Defence or Counterclaim by filing a Reply to Defence and Defence to Counterclaim.

In some instances, in lieu or in advance of a Defence to Counterclaim or Reply, a party may request that the other party clarify or correct deficiencies in its factual allegations or legal theories, or may ask the court to dismiss part or all of the lawsuit.

This may lead to amended Statements of Claim or amended Defences. Once the parties have completed the Statement of Claim, Defence, and any Reply, the issues for resolution by the court have been defined.

## DISCOVERY

Thorough case preparation is critical to any successful litigation. Discovery is the method by which parties gather relevant information from each other or from third parties. Research of the law, document review and organisation, and witness interviews help clients and their lawyers assess the merits of claims and defences. The extent to which these and other steps are needed is determined by the issues of the case.



### Discovery:

Discovery is usually the longest part of the case. It begins soon after a lawsuit is filed and often does not stop until shortly before trial.

During discovery, the parties ask each other and third parties for information about the facts and issues of the case. Information is gathered formally through written questions (known as “interrogatories”), requests for copies of documents, and requests for admission (which ask a party to admit or deny statements of fact).

### Expert Witnesses:

Often a claim or defence requires support from expert witnesses to explain technical information or validate an argument or claim.

One or more experts might be needed to testify about the connection between the defendant’s conduct and the loss suffered by the plaintiff, or the existence and amount of the plaintiff’s damages.

Expert witnesses work closely with a party’s representatives and barristers to prepare the party’s case.

### Motions:

Before trial, the parties may use motions, often called pre-trial applications, to ask the court to rule or act. Motions usually relate to law or facts in the case, but sometimes they seek clarification or resolution of procedural disputes between the parties. Some motions, such as a motion for summary judgment, which asks the court to dismiss part or all of a plaintiff’s case or a defendant’s defence, dispose of issues without trial.

Other motions might ask the court to order a party to produce specified documents or to exclude evidence from trial.

### Timing:

The duration of a legal case depends on the issues of the case, the amount of discovery to be conducted, and court scheduling and availability.

The parties, guided by the rules of

court, usually decide the timing of discovery.

Trial dates are set by the court. Timing and scheduling differ between state and federal courts.

## TRIAL

At trial, the parties present oral and other evidence in support of their claims or defences to a judge.

### Trial:

Immediately before trial, the plaintiff provides to the judge a book of documents, called a “Trial Book”, which contains a copy of pleadings and important affidavits.

Once the trial begins, each party presents its outline of the case in an opening statement.

Then, the parties present evidence. Each party may call witnesses or introduce documents and exhibits in support of its arguments.

After each witness is called and questioned, the opposing party has an opportunity to cross-examine the witness.

The plaintiff presents evidence first, then the defendant. Sometimes, the plaintiff is allowed to present additional evidence, called rebuttal evidence, after the defendant has finished presenting its case.

Once all the evidence has been presented, the parties give their closing arguments. After closing arguments, the judge usually reserves his or her judgment, then deliberates and reaches a decision.

### Costs and Fees:

The party who succeeds at trial will usually request the court to order the losing party to pay the successful party’s costs to prosecute or defend the case.

Recoverable costs are defined by rules of court. As a rough rule of thumb, these might represent about two-thirds of the costs incurred by the successful party.

## APPEAL

Following trial, a party dissatisfied with the result may appeal. During an appeal, a party asks a higher court to review the trial court proceeding.

The parties present their arguments in Notices of Appeal and Outline of ▶

# THE SHOWCASE OF EXCELLENCE

The Unione Italiana Vini presents the 27<sup>th</sup> edition of SIMEI, the international trade fair for winemaking and bottling machinery and equipment

"Drinktec in Munich, Germany is an international reference point for the beverage industry. In 2017, the German trade fair will be enriched by the presence of SIMEI, with a specialised area extending over an area of 20 thousand square metres dedicated to wine. An international audience will have the opportunity to experience the best of technology for the wine-producing sector, of which Italy is the largest producer." This is how **Paolo Castelletti**, General Secretary of the Unione Italiana Vini (UIV), commented on the 27<sup>th</sup> Edition of SIMEI, the most important international trade fair for winemaking and bottling machinery and equipment to be held from **11 to 15 September 2017 in Munich, Germany**, alongside *drinktec*, the leading trade fair in the liquid food and beverage industry.

"Not only will it be an opportunity not to be missed to find out about the innovative solutions in terms of machinery and equipment in the industry - Castelletti explained - but like the UIV, which has been organising this event since 1963, we shall be inviting the main European organisations representing the world of wine, including the CEEV (Comité Européen des Entreprises Vins), coordinating round tables and discussions, forums and workshops where companies will have the ideal opportunity to present and illustrate their products".

The Unione Italiana Vini is the only European organisation that has created and runs a trade fair like SIMEI, and over the years it has acquired the expertise necessary to understand and meet the requirements of companies and hence of SIMEI's exhibitors. "Furthermore - Castelletti added - the association ANFORMAPE is a member of the UIV and comprises producers of winemaking machinery and accessories. Many of these producers work with the companies that are members of the UIV to experiment their technology and validate practices that will then be applied on an EC level. This combination of technology producers and final users - Castelletti concluded - creates a unique synergy within the Association, a synergy that will be noticeable at SIMEI".

## ON THE RUN-UP TO SIMEI

Over to one large producer of Italian wines that tells us why it is important to take part in SIMEI 2017

### Lamberto Frescobaldi – Frescobaldi

*Territories and ancient traditions are part of you: what role do technology and innovation play in your company?*

To produce excellent wines, for those of us who control the entire production chain means following production processes that will enhance the territorial peculiarities while respecting

## AWAITING SIMEI@drinktec 2017

The SIMEI@drinktec Road Show goes on:

Enomaq: Saragozza, 14-17 February 2017

ProWein: Düsseldorf, 19-21 March 2017

Vinitaly: Verona, 9-12 April 2017

London Wine Fair: London, 22-24 May 2017

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27<sup>TH</sup> EDITION  
INTERNATIONAL ENOLOGICAL  
AND BOTTLING EQUIPMENT  
EXHIBITION  
@drinktec  
Go with the flow.  
11<sup>th</sup>-15<sup>th</sup> September 2017  
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www.simei.it  
www.drinktec.com/simei

the product. The evolution of technology has led to the improvement of physical processes, abandoning what once was a belief, chemistry. The more technology advances, the greater the recovery of the authenticity of the processes and the link with the territory.

### What is SIMEI for you?

It is an extremely important event not only for the excellence on show but also for the opportunity it offers to compare production processes. It is essential to be there to build contacts but above all to see what is new because there is nothing worse than thinking you have made it. You have to be humble and go as curious as possible to bring home new ideas that will boost continuous improvements.

*SIMEI 2017 in Munich: what do you expect from this edition?*

We are expecting a large audience and this means time for discussion and growth. SIMEI has always been a fair of the highest level, so we hope that Munich, with its international centre of gravity, can stimulate our imagination even more and give new impetus, essential to continue and take off again.

## USEFUL INFORMATION

### DATES

11-15 September 2017

### PLACE

Munich, Germany – Messe München Exhibition Centre

### PARTICIPATION

- exhibitors: complete the form and follow the instructions in the section "2017 application form" on the official site [www.simei.it/en](http://www.simei.it/en) or apply online on [www.drinktec.com/simei](http://www.drinktec.com/simei)
- visitors: information in the section "Visitors" on the official site [www.simei.it/en](http://www.simei.it/en)

Arguments, supplemented by oral submissions, which are presented to the appellate court along with the record of evidence from the trial court. The appellate court usually reviews a case for legal error only.

Except where plainly in error, the appellate court will not review factual evidence or override a judge's finding of fact. The appellate court then delivers its decision. The appellate court will dismiss the appeal if it finds that there was no error in the trial court proceeding. However, if there was an error, the appellate court can allow the appeal and substitute its own decision or order the trial court to conduct a new trial. An appeal can extend the litigation process by a year or more.

## ALTERNATIVES TO LITIGATION

Alternatives to litigation can save time and expense, but they may not result in a final resolution of the dispute. The

desirability of these alternatives should be evaluated early to allow their timely implementation.

### Settlement:

It is generally wise at the outset of any litigation proceeding to review the potential for an out-of-court settlement. Indeed, most matters settle before reaching the trial stage. Settlement can be discussed by any party at any time during litigation and is often a cost-effective alternative to trial. Depending upon the court rules, the judicial officer dealing with the pre-trial matters may or may not require the parties to discuss or attempt settlement, but most courts have procedures by which a party can request the court's assistance in settlement.

### Mediation:

The parties may be able to negotiate a settlement without outside help, but it is common to involve a neutral third party, known as a "mediator". This person might be another judge or a retired

judge. The mediator's job is to assist the parties' settlement efforts. The parties select the mediator, who meets privately with each party to discuss the strengths and weaknesses of each side's case. The mediator helps the parties identify the risks of the case and encourages them to consider how those risks can affect their goals. The mediator does not have the power to force the parties to agree on a settlement.

### Arbitration:

Arbitration is an adversarial proceeding in which the parties select a neutral third party, called an "arbitrator", to resolve their dispute. In arbitration, the parties present evidence and argue the case to the arbitrator, who then decides which party wins. The process is abbreviated and less formal than a trial. Arbitration often arises from private agreement. Parties who agree to settle their dispute using binding arbitration usually cannot appeal the arbitrator's ruling to a court.

## YALUMBA LOSES SIGNATURE BATTLE

YALUMBA HAS LOST a Federal Court trademark case it hoped would prevent Jacob's Creek from using the word 'signature' to describe a range of Barossa wines.

Since 1966 Yalumba has produced a premium Cabernet Sauvignon/Shiraz blend which bears the signature of one of the significant members of the winery team on the label. Jacob's Creek, owned by Pernod Ricard Winemakers, released three red wines in September 2015 under the Barossa Signature range.

Lawyers representing Yalumba claimed Pernod Ricard had used "deceptive similarity" when it used the 'signature' branding. However, Pernod Ricard rejected the notion, arguing the label reflected both the wine's geographical location and characteristics, and 'signature' was used adjectively.

Christophe Jean-Coutures, Pernod Ricard's chief executive officer, claimed in his affidavit evidence he used the word 'signature' in the sense the new products would be identifiable as "quintessential Barossa red wine and that of Jacob's Creek's renowned or signature region, the home of the brand, the Barossa".

When handing down the judgment, Natalie Charlesworth said the case came down to three questions:

1. Whether Pernod Ricard used the words 'Barossa Signature' appropriately under the Trade Marks Act;
2. Whether it was deceptively similar to the Yalumba Trademark; and
3. Whether Pernod Ricard used the term "in good faith to indicate the kind, quality, intended purpose, geographical origin or some other characteristic".

Charlesworth's conclusion:

"The first of those questions should be answered yes. The second should be answered no. It follows that Yalumba's application must be dismissed. Had it been necessary to answer the third question, I would have determined that issue against Pernod Ricard."

Robert Hill Smith, Yalumba chairman, told Business Insider he was disappointed the case had been dismissed.

"We have worked long and hard to build the reputation of our fine wine mark, The Signature, which embodies so much that is valued by our wider Yalumba community," Hill Smith said. "So whilst the law is one aspect of this saga, we value many other aspects of our Australian wine growing culture and its fraternity. We shall be careful to embrace those values forever."

Yalumba has until late January to appeal the decision.

## TEAMWORK

A positive result in litigation is nearly always the product of teamwork. By using a team approach, clients and litigation solicitors can adopt the litigation strategy that best suits the clients' risk tolerance, financial position and overall business objectives. Clients contribute by providing business expertise and knowledge of the facts. Lawyers, meanwhile, provide expertise on the legal issues, the trial process, the client's options for resolution, and the potential risks and rewards of each option.

## GET LEGAL ADVICE EARLY

I have acted as a lawyer in numerous commercial court disputes in the wine industry, ranging from trademark disputes, the Coonawarra GI boundary determination, disputes over the sale and purchase agreements for vineyards and wineries, grape contracts, distribution agreements and a variety of contractual matters. Getting advice early is, in my experience, vital to minimising cost and delay, and getting a strategic advantage in the dispute. Be the prepared one, on the front foot.

*Mark Hamilton of Grope Hamilton Lawyers provides specialist national legal services to the Australian wine industry. He has a lifetime of wine sector experience through his involvement with Hamilton's Ewell Vineyards. He can be contacted on (08) 8231 00898 or 0412 842 359 or by email at [mhamilton@gropehamiltonlawyers.com.au](mailto:mhamilton@gropehamiltonlawyers.com.au).* 