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LES (Scotland) 28 October 2010

Third Thursday Series: Public Law



Heriot W Currie QC

IP Litigation in the Court of Session

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What is the Court of Session?

- Scotland's Supreme Court
- specialist judges
- specialist counsel
- specialist solicitors
- access to expert witnesses

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Court Procedures

- Case Management
- e. g. Disclosure of expert evidence

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Some notable IP cases

Scotch whisky and North sea oil,
milkmen, perfume, pharmaceuticals,
medical instruments ...

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Society of Accountants in Edinburgh v Corporation of Accountants

“CA” – Chartered Accountants vs
Corporate Accountants

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Scottish Farmers Dairy Company v McGhee 1933 SC 148

Restrictive covenant – customer lists
and prohibited area

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Lang Brothers v Goldwell 1980 C 237

“Wee McGlen” – pretending it was
Scottish took unfair advantage of the
reputation and goodwill attached to
Scotch Whisky

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Haig & Co v Forth Blending Co 1954 SC 35

The “Dimple” bottle – leading case
on “get-up” in passing off – risk of
confusion after bottles opened and
used in public houses

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Santa Fe Int Corp v Napier Shipping 1984 – 5

The Balder and Hermod – semi-
submersible crane barges used to
construct N Sea oil platforms
(case settled after 196 Court days)

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Zino Davidoff – parallel imports from outside UK = trade mark infringement

Scotland did it better!
Lord Kingarth vs Laddie, J
[2000] SLT 683; [1999 RPC 631]

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Verathon v Aircraft Medical 2010

Revolutionary laryngoscope

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Court or Mediation

Complementary methods of dispute resolution - not necessarily alternatives

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Remedies available only from the court

- Interim interdict/Interdict
- Interim delivery up
- Revocation
- Certificate of contested validity

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Damages Account of profits

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Court of Session or Patents Court in London?

Recent attempt by defenders in
infringement/revocation case to have
case transferred to London

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Thank-you

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