

3. Trade Secret

Administrative

- Next Time: More Trade Secrets: 74-79; 80-86; 89-94.
- Seating Chart Today
- Confusion about Prerequisites
- Class ends at 2:15

News Wednesday

- Fashion Protection
- Vh1 vs. Death Star Guy

http://www.nytimes.com/2007/09/04/us/04fashion.html?_r=1&oref=slogin

<http://theknightshift.blogspot.com/2007/08/viacom-hits-me-with-copyright.html>

Last Time

Basic Doctrine

- State law (usually statutory); most based on UTSA
- 1. Subject Matter
 - Type of Info TS law was meant to protect
 - Secret
 - Trend: any valuable information
- 2. Plaintiff Took Reasonable Precautions under the circumstances to prevent disclosure.
- 3. Defendant misappropriated the Information
 - 3a. Improper Means (Today)
 - 3b. Breach of Confidence (Next Time)

Justification for TS Laws?

Element 2: Reasonable Precautions to Prevent Disclosure

Rockwell v. DEV

- Basic Facts
- Lower Court CA7 (1991)

Rockwell sells printing presses and replacement parts
 "piece part" drawings are used to manufacture parts that are very hard to reverse engineer.
 Two former employees leave to competitor, and are found with drawings in their possession.
 Key facts re: secrecy at bottom of p.50

Reasons for this requirement:

- 1. Reasonable Standards of the Industry
- 2. Non-extravagant
- 3. Non-productivity-impairing
- 4. Physical plus Contractual

How much effort should be enough? How many 'fencing costs'?

Element 3: Misappropriation

Basic Doctrine

Improper Means OR Breach of Confidence

Improper Means

duPont v. Christopher

- Basic Facts
- Held

Secret: Unpatented process for producing methanol.
 Process revealed by taking photos of plant under construction.
 Alleged misappropriation: Hiring someone to fly over plant.

What is the test?

Advice to Client?

Do not do

- Don't break any other laws
 - Tap phones
 - Eavesdrop
 - Fraud
 - Other espionage
- Inventive-like steps are better than non-inventive-like steps
- Don't force people to do have to do other than