

Class 4: More Trade Secrets

Administrative

Next Time: Patents: 117-24 skim; 124-27; 128-139; 1047-56; Section 101; Read Through two patents at websites listed in syllabus

Exam { 2-4 Questions } 2-3 issue spotters; maybe 1 policy.

Open Book { Bring any printed material you want.

TLSA Meeting tomorrow, Noon, Room 205

Last Time

Student hypo: Different result for duPont in the age of Google Maps?

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 ()
3b. Breach of Confidence ()

Advice to two clients:

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

Line defining "improper means"

Don't break any other laws

Inventive-like steps are better than non-inventive-like steps (63) "Highest standards of commercial morality"

Tap phones
Eavesdrop
Fraud
Other espionage

Utilitarianism and Trade Secrets

Specifically:

Why does the Utilitarian theory of TS require the would-be TS owner to take "reasonable precaution" to protect the secret?

In reverse: What would a utilitarian say is the line between misappropriation and "vigorous competition"?

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Reverse Engineering

Defined / Rule / Rationale

Interaction with Element 2: Reasonable Precautions

Interaction with Element 3: Improper Means

Kadant v. Seeley

Basic Facts

Papermaking products
Employee of three years terminated. Went to work for competitor two years later.
Competitor launched competing line of products

Procedural Posture

Held

Reasoning:

Contracts and Departing Employ-

When is Employee Skills/Knowledge a TS?

Case: Wexler v. Greenberg

Basic Facts

Wexler was a "Reverse Engineer" of chemical products for cleaning supply mfr.

Gained knowledge of chemical processes and formulae by studying competitors.
No Contract

Wexler left to a former customer of the company and started line of competing products for them.

Lower Court (Chancellor)

PA Supremes (1960)

Balance

Contracts

Non-Compete K's

Defined

Three State Regimes

Competing Policy Interests