

**Class 4: More Trade Secrets**

Administrative

Next Time: Patents: 117-24 skim;  
124-27; 128-139; 1065-74; Section  
101; Read Through two patents at  
websites listed in syllabus

News Thursdays

Election Copyright

- Obama/Brooks & Dunn 🌐 ↪ Video 🌐
- McCain/Van Halen 🌐 ↪ Video 🌐
- Ohio Republican Party/Jackson Browne 🌐

Last Time

Advice to two clients:

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

- 1. Reasonable ↪ Standards of the Industry?
- 2. Non-extravagant ↪ Need not be perfect
- 3. Non-productivity-impairing
- 4. The law-and-econ approach

Line defining "improper means"

- Don't break any other laws ↪ Tap phones  
Eavesdrop  
Fraud
- (63) "Highest standards of commercial morality"
- Consider the cost of the fence required to stop you

Theme for today: The nature of vigorous competition.

Basic Doctrine ⊕

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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

Had confidentiality agreement

Procedural Posture

Held

Reasoning:

Contracts and Departing Employees

When is Employee Skills/Knowledge a TS?

Case: Wexler v. Greenberg

Basic Facts

Wexler was a "Reverse Engineer" of chemical products for cleaning supply mfgr.  
Wexler left to a former customer of the company and started line of competing products for them.

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

Lower Court (Chancellor)  
PA Supremes (1960) Ⓞ

Balance Contracts

Non-Compete K's

Defined

Three State Regimes

Virginia  
New York  
California

Competing Policy Interests