

Syllabus for Trade Secrets

Law 347
Spring 2022
2 Credits

Instructor: T.J. Chiang
Office: Room 325
Office Phone: (703) 993-9868
E-mail: tchiang2@gmu.edu

I. COURSE MATERIALS.

Elizabeth A. Rowe & Sharon K. Sandeen, Cases and Materials on Trade Secret Law (3d ed. 2021).

Additional materials on Blackboard.

II. LEARNING OUTCOMES.

By the end of the course, students should have an understanding of the doctrinal principles of trade secret law and the moral and economic policy considerations that underlie this body of law. Additionally, students should learn general skills on how to read and analyze cases and other legal materials, to identify and respond to legal problems, to make legal arguments, and to apply legal rules to facts.

III. OFFICE HOURS.

Office hours are Tuesdays from 4-6pm. Due to the pandemic office hours will be on Zoom until further notice. Please email me to set up a Zoom link. I am also happy to meet on Zoom at other times if that is more convenient.

IV. ASSESSMENT AND GRADES

Your grade will be based on an open-book final exam, which will be graded blindly. Additional details regarding the exam will be determined later in the semester based on conditions at the time. The current plan is for grades to be awarded on the standard law school curve.

V. COVID-19

The current plan is for the class to be taught in-person. However, the situation is extremely uncertain and there is at least the possibility that we may have to change to online class. We may also use online class for snow days. You should have the proper equipment (webcam, internet) for that possibility. If online class is necessary we will use the following Zoom link: <https://gmu.zoom.us/j/4624306081>.

For in-person class, face masks are required for all students, even if you are fully vaccinated and boosted. You must wear your mask so that it fully covers your nose and mouth, and you should keep your mask on at all times indoors, even when you are speaking in class. If you have an exemption from the vaccination requirement, you must comply with the masking requirement and additionally maintain distance from others.

If you are experiencing symptoms of Covid-19 or any other respiratory illness, please do not come to class until you fully recover. Even if you are vaccinated. Even if you test negative for Covid-19. Not only is there the possibility of a breakthrough infection or a false negative test, there is the possibility of some other illness such as influenza or the common cold that you should not want to transmit to your classmates..

VI. ASSIGNMENTS

Generally, we will cover one topic per class. If we fall behind, we will carry over material to the next class. The assignments are also subject to change depending on our progress.

The assigned pages include both the excerpted cases and the casebook authors' notes about them. I recommend reading the notes, but we will focus mainly on the cases in class.

1. Introduction to Trade Secrets

Casebook 262-267, 1-30

E.I. DuPont de Nemours & Co. v. Christopher, 431 F.2d 1012 (5th Cir. 1970)

Waymo LLC v. Uber Techs., Inc., 2017 WL 2123560 (N.D. Cal.)

Clorox Co. v. S.C. Johnson & Son, Inc., 627 F.Supp.2d 954 (E.D. Wis. 2009)

2. Conditions of Protection I: Subject Matter

Casebook 51-55, 60-67

Del Monte Fresh Produce Co. v. Dole Food Co., 136 F. Supp. 2d. 1271 (S.D. Fla. 2001)

Altavion, Inc. v. Konica Minolta Sys. Lab. Inc., 226 Cal. App. 4th 26 (2014)

Blackboard

Religious Tech. Center. v. Wollersheim, 796 F.2d 1076 (9th Cir. 1986)

Richter v. Westab, Inc., 529 F.2d 896 (6th Cir. 1976)

3. Conditions of Protection II: Secrecy versus Public Knowledge

Casebook 101-104, 79-82, 1

Hutchison v. KFC Corp., 51 F.3d 280 (9th Cir. 1995)

Bondpro Corp. v. Siemens Power Generation, Inc., 463 F.3d 702 (7th Cir. 2006)

Rohm and Haas Co. v. Adco Chem. Co., 689 F.2d 424 (3d Cir. 1982)

Peggy Lawton Kitchens, Inc. v. Hogan, 18 Mass. App. Ct. 937 (1984)

4. Conditions of Protection III: Economic Value

Casebook 145-155, 157-174

Electro-Craft Corp. v. Controlled Motion, Inc., 332 NW.2d 890 (Minn. 1983)

Yield Dynamics, Inc. v. Tea Sys. Corp., 154 Cal.App.4th 547 (2007)

Buffets, Inc., v. Klinke, 73 F.3d 965 (9th Cir. 1996)

Taylor v. Babbitt, 760 F. Supp. 2d 80 (D.D.C. 2011)

5. Conditions of Protection IV: Reasonable Effort

Casebook 199-212, 217-235,

Rockwell Graphic Sys. v. Dev Indus., Inc., 925 F.2d 174 (7th Cir. 1991)

Vendavo, Inc. v. Long, 397 F. Supp. 3d 1115 (N.D. Ill. 2019)

InCase Inc. v. Timex Corp., 488 F.3d 46 (1st Cir. 2007)

Learning Curve Toys, Inc. v. Playwood Toys, Inc., 342 F.3d 714 (7th Cir. 2003)

6. Scope of Protection

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Nichols v. Universal Pictures Corp., 45 F.2d 119 (2d Cir. 1930)

Casebook 326-330, 60-67

Mangren Res. & Development Corp. v. Nat'l Chem. Co., 87 F.3d 937 (7th Cir. 1996)

Altavion, Inc. v. Konica Minolta Sys. Lab. Inc., 226 Cal. App. 4th 26 (2014)
(re-read)

7. Misappropriation I: Improper Means

Casebook 253-267, 271-275, 281-295

Pioneer Hi-Bred Int'l v. Holden Found. Seeds, Inc., 35 F.3d 1226 (8th Cir. 1994)

E.I. DuPont deNemours & Co. v. Christopher, 431 F.2d 1012 (5th Cir. 1970)
(re-read)

Chicago Lock Co. v. Fanberg, 676 F.2d 400 (9th Cir. 1982)

Microstrategy, Inc. v. Bus. Objects, S.A., 331 F. Supp. 2d 396 (E.D. Va. 2004)

8. Misappropriation II: Duty of Confidentiality

Casebook 299-310, 315-323

Town & Country House & Homes Serv. Inc. v. Evans, 150 Conn. 314 (1963)

Shatterproof Glass Corp. v. Guardian Glass Co., 322 F. Supp. 854 (E.D. Mich. 1970)

Kamin v. Kuhnau, 232 Or. 139 (1962)

Burten v. Milton Bradley Co., 763 F.2d 461 (1st Cir. 1985)

9. Misappropriation III: Use or Disclosure

Casebook 331-340, 375-403

ScentSational Techs., LLC v. Pepsico, Inc., 2017 WL 4403308 (S.D.N.Y)

Pepisco, Inc. v. Redmond, 54 F.3d 1262 (7th Cir. 1995)

Whyte v. Schlage Lock Co., 101 Cal. App. 4th 1443 (2002)

Archer Daniels Midland Co. v. Sinele, 2019 IL App (4th) 180714

10. Non-Compete Agreements; Third Party Liability

Casebook 357-375, 342-355

Campbell Soup Co. v. Desatnick, 58 F. Supp. 2d 477 (D.N.J. 1999)

Edwards v. Arthur Andersen LLP, 44 Cal.4th 937 (2008)

DVD Copy Control Ass'n v. Bunner, 116 Cal. App. 4th 241 (2004)

Blackboard

Ronald J. Gilson, *The Legal Infrastructure of High Technology Industrial Districts: Silicon Valley, Route 128, and Covenants Not to Compete*, 74 N.Y.U. L. Rev. 575 (1999)

- You should, at a minimum, read the introduction for class.

11. Ownership; First Amendment

Casebook 340-342, 403-424, 457-468

Morton v. Rank Am., Inc., 812 F. Supp. 1062 (C.D. Cal. 1993)

N. Electric Co. v. Torma, 819 N.E.2d 417 (Ind. App. 2004)

Ingersoll-Rand Co. v. Ciavatta, 110 N.J. 609 (1988)

Ford Motor Co. v. Lane, 67 F. Supp. 2d 745 (E.D. Mich. 1999)

12. Remedies

Casebook 487-497, 512-521, 527-532

SI Handling Sys., Inc. v. Heisley, 753 F.2d 1244 (3d Cir. 1985)

Gen. Elec. Co. v. Sung, 843 F. Supp. 776 (D. Mass. 1994)

Roton Barrier, Inc. v. Stanley Works, 79 F.3d 1112 (Fed. Cir. 1996)

Linkco, Inc. v. Fujitsu Ltd., 232 F. Supp. 2d 182 (S.D.N.Y. 2002)

13. Theoretical Foundations of Trade Secret Law

Blackboard

Robert G. Bone, *A New Look at Trade Secret Law: Doctrine in Search of Justification*, 86 Calif. L. Rev. 241 (1998)

Mark A. Lemley, *The Surprising Virtues of Treating Trade Secrets as IP Rights*, 61 Stan. L. Rev. 311 (2008)

Casebook 30-38, 571-576

Ruckelshaus v. Monsanto Co., 467 U.S. 986 (1984)