

# 3. Trade Secret

## Administrative

Next Time: More Trade Secrets: 74-79; 80-86; 89-94; 101-04.  
Casebooks? Photocopies?  
Seating Chart Today

## Last Time

Finish Powerpoint about Economics of IP

## 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?

- Utilitarianism - Invest in Innovation
- Punish Wrongdoing
  - Uphold standards of commercial behavior;
  - Tort
- Secrets like these have the attributes of property; they "Act" like Property.
  - Lockean
  - Contract

## Trade Secrets

## Element 2: Reasonable Precautions to Prevent Disclosure

- Rockwell v. DEV
  - Basic Facts
    - Plans for making parts to printing machines
    - Misappropriation: Two employees left and started a new company. - They had the plans
  - Lower Court
    - Granted SJ for defendants
    - Not secret
      - Kept in a vault
      - Authorization required
      - Vendors given plans but confidentiality agreements
  - CA7 (1991)
    - Enough to get to a jury.
    - Only in an extreme case can you get SJ, - Balancing
- How is this different from "Not Generally Known" / Secret in Element 1?
  - Reasons for this requirement:
- How much effort should be enough? How many 'fencing costs'?
  - If actual costs to protect outweighs costs to defend in court.
  - If actual costs outweigh the value of the TS to you. - Prof Ohm: Unsure about whether this is a valid test.
  - Protect it enough to show the court that it's likely that the def. used improper means. - Evidentiary theory of Element 2
  - Don't have to build a fortress
    - Don't require "unreasonable" expenditures.
    - Perfect security isn't optimum security.
  - Customs in the Industry.

## Element 3: Misappropriation

- Basic Doctrine
  - Improper Means OR
  - Breach of Confidence
    - Explicit K
    - Implied Duty
- Improper Means
  - duPont v. Christopher
    - Basic Facts
    - Held - Overflight over uncompleted plant is "improper means"
  - What is the Test? What advice do you give your clients?