Class 4: More Trade Secrets

- Administrative
  - Next Time: Patents: 117-24; 124-27; 128-139; 139-141; Section 101; Read Through two patents at websites listed in syllabus
  - Casebooks?
  - Seating Chart
  - Exam
    - 2-4 Questions
      - 2-3 issue spotters; maybe 1 policy.
    - Open Book
      - Bring any printed material you want.
- Last Time
  - Student asked about Choice between TS and Patent
  - Basic Doctrine
    - State law (usually statutory); most based on UTSA
    - 1. Subject Matter
      - Type of Info TS law was meant to protect
        - Trend: any valuable information
      - Secret
    - 2. Plaintiff Took Reasonable Precautions under the circumstances to prevent
      - Your client's question: How many precautions are enough to qualify for cause of action?
      - Google: Confidential "Do Not Distribute"
    - 3. Defendant misappropriated the Information
      - 3a. Improper Means
      - 3b. Breach of Confidence
  - Element 3: Misappropriation
    - Improper Means
      - duPont v. Christopher
      - What is the Test? What advice do you give your clients?
        - Unanticipated, undetectable, or unpreventable
          - Reasonableness
        - Restatement of Torts
          - Physical force, fraud, espionage, etc. all lead to liability
        - "Generally accepted as commercially moral"
          - vary from industry to industry
        - Cost involved in the protection is very high, then they may not need to do it, they can just sue you.
        - Reverse Engineering
- Reverse Engineering
  - Defined / Rule / Rationale
    - Process of taking a product or a process, obtained in a lawful manner, and taking it apart to see how it works and recreating it. Through own effort / ingenuity.
    - Why?
      - Rewarding work.
        - Lockean
      - TS restrains innovation but this is a public policy / public domain justification
      - Timeframe
        - Given inventor time to make it more difficult
      - Tied to fact that you're "giving" something to the public.
  - Interaction with Element 2: Reasonable Precautions
    - What if a part is sold AND easy to reverse engineer? Still possible to sue for TS misappropriation against one who did NOT reverse engineer?
    - Do Locks matter? How robust must those locks be?
  - Interaction with Element 3: Improper Means
- Contracts and Departing Employees
  - Departing Employees
    - Case: Wexler v. Greenberg
      - Basic Facts
      - Lower Court (Chancellor)
      - PA Supremes (1960)
        - Held
        - Reasoning
          - Difference between disclosure preexisting TS and employee developing TS on own.
          - (Sold it in same packaging)
          - Not the product of independent research, instead just mere reverse engineering.
          - Notice to Employee
    - Balance
    - Contracts
  - Non-Compete K's
    - Defined
    - Three State Regimes
    - Competing Policy Interests
      - If no Copr. or TS have been taken or infringed, why should courts enforce non-compete clauses?
  - K's to Keep Secrets