

Trade Secrets

Sec. 347-001
CRN 16699
Professor Claeys
Spring 2009

Welcome to Trade Secrets Law

Office hours and whereabouts

My office is on the fourth floor, in the faculty suite, Room 420. My phone number is (703) 993-8247. My email address is eclaey@gmu.edu. The course also has a TWEN site, and I am reachable on the discussion board of that site.

This semester, I will hold office hours Tuesday, 4 to 5 p.m. These are “walk-by” hours, meaning that I do not have any other appointments during them and you are free to come in to my office without appointment. However, I am happy to schedule appointments if office hours will not be satisfactory for your questions.

Class times, cancellations, and make-up classes

We meet in Hazel Room 332, Tuesdays, 2 p.m. to 3:50 p.m. At this time, I do not anticipate canceling any classes. If I need to cancel class suddenly due to illness or some emergency, I will have my secretary post notices in the atrium, elevators, and on the door of 332, and I will send an email to the class.

Reading materials and first day's assignment

I am not using a casebook. We will read cases that I will post on the course TWEN page. All the materials are posted in the sub-page for “course materials.” They are listed together by class date, except for Restatement and Uniform Trade Secret Act provisions, which are available at the bottom after all the other categories.

However, you need to be prepared for the bitter along with the sweet: The cases I post are full-length, not excerpted. I expect you to read the cases in full, learn the facts, and then identify the portions of the cases relevant for the day's discussion.

For Tues. Jan. 13, please read:

Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470 (1974). Ignore or skim the parts of *Kewanee* that give you the facts of the case and the law of preemption. (We'll come back to preemption at the end of the course.) Focus on the portions that explain what trade secret law is and what policies it promotes.

Newbery v. James, 35 Eng. Rep. 1011 (Ch. 1817).

Yovatt v. Winyard, 37 Eng. Rep. 425 (Ch. 1820).

Vickery v. Welch, 36 Mass. 523 (1837).

Peabody v. Norfolk, 98 Mass. 452 (1868).

Schiller, *Trade Secrets and the Roman Law*, 30 Colum. L. Rev. 873 (1930).

We'll spend most of class on *Newbery*, *Yovatt*, *Vickery*, and *Peabody*. In preparation for that discussion, consider the following observations and questions. According to Schiller, in Roman law, theft of what we'd now call trade secrets was covered by a private action falling in what was then master-servant law and what we'd now call "agency." In the cases assigned, where does "trade secrets" fit into the law? Agency? Tort? Property? Contract? Employment?

Please also skim the Restatement

Coverage

Subject to my changing my mind, we will cover the following materials in approximately the following amount of time:

Overview. 1 week. Basic policies of trade secret law; foundations in tort doctrine of unfair competition.

What count as trade secrets? Approximately 4 weeks.

Misuse of a trade secret. Approximately 5 weeks. Improper means; reasonable precautions against disclosure; employee confidences, express and implied; independent discovery.

Remedies for misuse. Approximately 2 weeks. Scope of compensatory damages; grounds for obtaining an injunction; restitution and other remedies.

Preemption. Approximately 1 week. Preemption by federal patent or copyright law.

Class reading

I will assign 2 or 3 substantial cases per class session. From time to time, I will also assign excerpts from scholarly articles on trade secret law.

To help you read ahead, I will post large blocs of class reading on the class TWEN page, significantly in advance. However, these postings are not promises, but projections. I reserve the right to change the projected reading schedule depending on how fast or slow we are going. If you read more than a class ahead, you assume the risk of reading material I decide to leave on the cutting room floor.

I expect you to be prepared for class. For each case, I expect you to understand the facts, the cause of action involved, the remedy sought, the procedural posture of the case, the element or elements that are the special object of study in that case, and the holding and rationale. Again, I expect you to disregard case discussions on legal arguments that do not involve trade secrets. When I can, I will ask questions directing your attention to one or a few aspects of a case. You should be able to read the case to identify the passages most relevant to the topic for discussion that day.

Class expectations

I expect you to attend class on a regular basis, and the ABA makes it a general condition of accreditation that students not miss more than 2 weeks of class. I keep attendance by having you sign in each day.

If you miss more than 2 classes, I will not seat you for the examination and to give you a “forced withdraw” grade for the course. This is what you will learn to be a “strict liability” policy: I do not waive this requirement because you are sick, have a job interview, personal emergency, &c. I do not enforce the attendance policy when I need to reschedule class because I am canceling class due to non-GMU commitments. But I expect you to self-regulate interviews, personal emergencies, illnesses, religious observances and other such commitments, so that you do not miss more than 2 classes’ worth of time.

I expect you to prepare for class. I call on students during class, to discuss material that a lawyer should have been able to digest from the reading without much assistance. If I call on you and you are unprepared, that counts as an absence for that hour. If you are unprepared and wish to avoid getting called on, please notify me before the beginning of class and I will mark you for a 1/2 absence for the class.

During class, I expect you to be generally respectful to me and your classmates. Imagine the standards of comportment you would use if you were a lawyer, sitting in front of a judge, watching as the judge engages another lawyer in the proceeding. Please treat me and any of your colleagues with whom I am conversing with the same professional courtesy.

Because this is a general standard, I cannot predict all the situations in which it will apply—or how I will correct breaches of it. But let me give a few ~~pet-peeves~~ illustrations.

Please do not walk into class after it has begun; I reserve the right to deny a student who has done so a seat and deem him not to have attended for the hour.

Please do not engage in disturbing side conversations during class; I reserve the right to break up such conversations by calling on the participants and, if they cannot answer, to deem them unprepared for the day.

Please do not use personal computers during class for any form of entertainment besides taking notes and referring materials directly related to class; I reserve the right to deem students using their computers for non-class purposes not in attendance.

Please mute or turn off cell phones and other noise-making devices before class. If a cell phone rings during class, I reserve the right to make the owner stand and answer it in front of the rest of the class. For repeat offenders, I reserve the right to answer the phone myself.

Grading

The grade for this class will be based solely on a 2 hour, in-class, closed-book examination at the end of the semester. When I say “solely,” I mean that I do not and will not adjust grades for in-class participation except as consistent with my attendance policy.

The exam will probably be entirely an essay exam, though there is some possibility it may include a multiple-choice component.