CLASS ASSIGNMENTS (v.1.0)

There is no casebook for this class, and thus all readings are posted to TWEN. You are responsible for downloading, printing and reading all assigned material, regardless of whether we discuss them in class. I reserve the right not to cover some material in the readings in order to stay on schedule, and, as a reminder, you are responsible for all of the readings listed in the syllabus that we do not cover in class.

If a reading is designated as “skim,” then this means that you should read it for basic understanding, and not with the usual analytical scrutiny and note taking employed in the regular reading assignments.

CLASS 1

What is Trade Secret Law?

Restatement (Third) of Unfair Competition § 39 and cmts. a-e

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

Establishing Trade Secrecy: An Overview on Black Letter Law:

Skim: Restatement (First) of Torts § 757 and cmt. b
Virginia UTSA § 59.1-336 (definition of “trade secret”) Restatement (Third) of Unfair Competition § 39

Re-read Electro-Craft Corp. seeking an answer to this question:  Who bears the burden of proving a trade secret is a trade secret, and what suffices to make out this burden?

Establishing Trade Secrecy: Value & Competitive Advantage:

Background: Restatement (Third) of Unfair Competition § 39 & cmt. e
Electro-Craft, 332 N.W.2d at 900-01

Metallurgical Indus. v. Fourtek, 790 F.2d 1195, 1201 (5th Cir. 1986)

Phillips v. Frey, 20 F.3d 623, 628 (5th Cir. 1994)

CLASS 2

Establishing Trade Secrecy: Novelty

Restatement of Torts § 757 cmt. b  
Virginia UTSA § 59.1-336  
Restatement (Third) of Unfair Competition § 39

*Organic Chemicals* (from class 1), pp. 630-31 (discussion of the relationship between trade secrets and patents)

_Buffets, Inc. v. Klinke_, 73 F.3d 965 (9th Cir. 1996)

_Cataphote Corp. v. Hudson_, 422 F.2d 1290, 1293-94 (5th Cir. 1970)

Establishing Trade Secrecy: Secrecy

Restatement of Torts § 757 cmt. b  
Virginia UTSA § 59.1-336  
Restatement (Third) of Unfair Competition § 39 cmt. f

_Bristol v. Equitable Life Assur. Soc._, 30 N.E. 506 (N.Y. 1892)

_Metallurgical Indus._ (from class 1), pp. 1199-1202

_Rohm & Haas Co. v. Adco Chem. Co._, 689 F.2d 424 (3d Cir. 1982)

Establishing Trade Secrecy: Duration

_Research Equip. Co. v. Galloway and Scientific Cages_, 485 S.W.2d 953 (Tex. 1972)

CLASS 3

Establishing Trade Secrecy: Trade Secrets vs. Idea Submissions & Self-Disclosing Ideas:

_Lehman v. Dow Jones & Co._, 783 F.2d 285 (2d Cir. 1986).

Establishing Trade Secrecy: Use:

Restatement of Torts § 757 cmt. b  
Virginia UTSA § 59.1-336  
Restatement (Third) of Unfair Competition § 39

_Victor Chemical Works v. Iliff_, 132 N.E. 806 (Ill. 1921) (read what you need in order to follow the ¶ with keynotes 6-8 on p. 812)
Dresser-Rand Co. v. Virtual Automation, Inc., 361 F.3d 831 (5th Cir. 2004) (read what you need to follow the discussion of the “no finished product” argument, keynotes 9 & 10 p. 839)

Metallurgical Industries Inc. (from class 1), pp. 1202-03 (the “negative know-how” argument)


CLASS 4

Establishing Trade Secrecy: Cost of Development & Sweat of the Brow:

Rest. Torts § 757 cmt. b (from class 1), factor 5.

Metallurgical Industries Inc. (from class 1), pp. 1201-02 (the discussion of the cost-of-development argument)

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

Establishing Trade Secrecy: Reasonable Precautions:

Restatement of Torts § 757 cmt. b
Virginia UTSA § 59.1-336 (definition of “trade secret”)
Restatement (Third) of Unfair Competition § 39 and § 40(b)(4)

Electro-Craft (from class 1), 332 N.W.2d at 901-03 (focusing this time on part A.3(c))

Syntex Opthalmics, Inc. v. Novicky, 214 U.S.P.Q. 272 (N.D. Ill. 1982), aff’d, Syntex Opthalmics, Inc. v. Tsuetaki, 701 F.2d 677 (7th Cir. 1983)

In re Innovative Construction Sys., 701 F.2d 677 (7th Cir. 1983)


CLASS 5

Misappropriation: An Overview:

Restatement of Torts § 757
Virginia UTSA § 59.1-336 (definition of “misappropriation”)
Restatement (Third) of Unfair Competition § 40.
Double Misappropriation:

Restatement of Torts § 757(c)
Virginia UTSA § 59.1-336 (“Misappropriation,” 2(a) & 2(c))
Restatement (Third) of Unfair Competition § 40(b)(3)

*Metallurgical Indus* (from class 1), p. 1204-05 (parts V and VI)


Accidental Disclosures:

Restatement of Torts § 757 cmt. b
Virginia UTSA § 59.1-336 (definition of “misappropriation”) Restatement of Unfair Competition § 40(b)(4) (from the section on the Restatements and UTSA).

*B.C. Ziegler & Co. v. Ehren*, 414 N.W.2d 48 (Wis. 1987)


Express & Implied Duties of Confidentiality:

Restatement of Torts § 757(b)
Virginia UTSA (definition of “misappropriation,” § (b)(2))
Restatement (Third) of Unfair Comp. §§ 40(b)(1) & 41

Restatement (Third) of Unfair Competition § 41 cmt. b (be prepared to discuss the illustrations)

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

*Smith v. Snap-On Tools Corp.*, 833 F.2d 578 (5th Cir. 1988).

**CLASS 6**

Misappropriation: Confidentiality and Allocation of Trade Secret Rights between Employer and Employee:

Restatement (Third) of Unfair Competition § 42 cmt. e


Misappropriation: An Employee’s Duty of Confidentiality:

Restatement (Third) of Unfair Competition § 42 cmts. b & c.
American Stay Co. v. Delaney, 97 N.E. 911 (Mass 1912).

Electro-Craft (from class 1), p. 903 (the discussion of misappropriation) and more generally pp. 901-03 (the discussion of reasonable precautions)

Misappropriation: Confidentiality and an Employee’s Defense of Industry Skill:

Restatement (Third) of Unfair Competition § 42 cmt. d.

AMP v. Fleischhacker, 823 F.2d 1199 (7th Cir. 1987) (focus especially on pp. 1202-06)

GTI Corp. v. Calhoon, 309 F. Supp. 762 (S.D. Ohio 1969) (focus on the court’s discussion of the distinction between trade secrecy and employee general skill)

CLASS 7

Misappropriation: Non-Competition Agreements as an Alternative to Trade Secret Litigation:

Restatement (Third) of Unfair Competition § 42 cmt. g


Calhoon (from class 6) (focusing now on the court’s treatment of the non-compete agreement in the case)

Cal. Bus. & Prof. Code § 16,600

Gordon v. Landau, 321 P.2d 456 (Cal. 1958)

Fla. Stat. 542.335


CLASS 8

Misappropriation: Improper Means, Independent Discovery and Reverse Engineering:

Restatement (Third) of Unfair Competition § 43 & comments

E.I. du Pont deNemours & Co. v. Christopher, 431 F.2d 1012 (5th Cir. 1970)

Chicago Lock Co. v. Fanberg, 676 F.2d 400 (9th Cir. 1982)
Texas Urethane, Inc. v. Seacrest Marine Corp., 608 F.2d 136 (5th Cir. 1979)

Pioneer Hi-Bred Int’l v. Holden Found. Seeds, 35 F.3d 1226 (8th Cir. 1993)

CLASS 9

Remedies: Equity:

Restatement (Third) of Unfair Competition § 44
Virginia UTSA § 59.1-337

Sperry Rand Corp. v. A-T-O, Inc., 447 F.2d 1387 (4th Cir. 1971). (For this class, read what you need only to follow part II.A at p. 1392)

Winston Research Corp. v. Minnesota Min. Co., 350 F.2d 134 (9th Cir. 1965) (read what you need to follow part IV of the court’s opinion)

Bimbo Bakeries, Inc. v. Botticella, 613 F.3d 102 (3rd Cir. 2010)

CLASS 10

Remedies: Monetary Relief:

Virginia UTSA § 59.1-338
Restatement (Third) of Unfair Competition § 45 & comments

Sperry Rand (from class 10), only part II.B, pp. 1392-95

University Computing Co. v. Lykes-Youngstown Corp., 504 F.2d 518 (5th Cir. 1974) (read what you need to follow the discussion pp. 535-40)

CLASS 11

Preemption: Federal IP Law Preempting State Trade Secrecy Law (Copyright & Patent)
Copyright:


Patent:

CLASS 12

State-Based Preemption: The Uniform Trade Secrets Act and State Common Law:

Virginia UTSA § 59.1-341

*Burbank Grease Services v. Sokolowski* (“Burbank I”), 693 N.W.2d 89 (Wis. App. 2005)

*Burbank Grease Services v. Sokolowski* (“Burbank II”), 717 N.W.2d 781 (Wis. 2006)

*Sheets v. Yamaha Motors Corp., USA*, 849 F.2d 179 (5th Cir. 1988). (class discussion will focus on part III of the court’s opinion (on unjust enrichment) – though you’ll need to understand part II to follow the holding in part III)


CLASS 13

TBD

CLASS 14

TBD