

## **Issues in Trade Secret Law**

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### **First Hour – Trade Secrets and Employee Mobility**

A. Overview: trade secret law and employee mobility. Read the introductory note in the textbook at p.82 before the *Wexler* case.

- (1) The basic question: what information can a departing employee take and use at the next job?
- (2) The employer's perspective.
- (3) The departing employee's perspective.
- (4) The big picture: innovation policy, venture funding, start-up formation.
- (5) How employee mobility problems arise in Silicon Valley.

B. Inevitable Disclosure: *Whyte v. Schlage Lock Co*, 101 Cal. App. 4th 1443 (2002) (focus on pages 1457-1464); *PepsiCo, Inc. v. Redmond*, 54 F.3d 1262 (7th Cir. 1995).

- (1) What is “inevitable disclosure”?
- (2) What public policy issues does it highlight?
- (3) Why have some states accepted or rejected the theory? What is different about California's employee mobility laws?
- (4) What are the best arguments for and against the theory?
- (5) What effect on innovation might adopting or rejecting “inevitable disclosure” have in a given jurisdiction?

## **Second Hour– Remedies in Trade Secret Cases (Textbook pp. 105-11)**

A. Overview: What kinds of injuries do plaintiffs suffer from trade secret misappropriation, and how might damages be calculated? What kinds of injunctive relief can be issued, especially when a trade secret later becomes generally known?

- (1) Three basic remedies: actual loss, unjust enrichment, and reasonable royalty.
- (2) Courts are flexible, and the means of calculation vary widely.

B. A Simple Illustration: *Morlife, Inc. v. Perry*, 56 Cal. App. 4th 1514 (1997) (focus on the section entitled “Relief”); California Civil Code sections 3426.2-3426.3.

- (1) What was the injury in *Morlife*?
- (2) What category of damages was awarded? How was the calculation made?
- (3) How the same calculation principle can apply in complex technology cases.
- (4) What kind of injunction did the court issue?

C. The Head-Start Injunction, the Overbroad Injunction: *Winston Research Corp. v. Minnesota Mining and Mfg. Corp.*, 350 F.2d 134 (9th Cir. 1965) (focus on Section IV); California Civil Code section 3426.2(a).

- (1) What is a “head start” injunction?
- (2) What is the test for calculating the appropriate “head start” period?
- (3) What can be a problem in the wording of a trade secret injunction?
- (4) What is the policy issue with overbroad injunctions?

D. Remedy for the Defendant – “Bad Faith”: California Civil Code section 3426.4.

E. Conclusion and Q& A