

INTELLECTUAL PROPERTY
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HANDOUT
TRADE SECRET HYPOTHETICAL #1 – NEW VENTURE

John is a successful entrepreneur. He has already founded two companies, nurtured them into successful ventures and then sold them at a handsome profit. John now has an idea for a new venture. He has spent the last 18 months researching whether anyone would be interested in the service that he has thought of. He has looked extensively at issues such as whether there is a perceived need in the industry, how budgets are structured within companies that are potential client companies, and whether those who perceive the need would have the authority to make the purchases. John's research has taken the form of three rounds of questions. Based on the answers from earlier rounds, he has refined his idea and altered the questions to see if he can design a service that will be well-received. He is careful to vary his questions so that no single contact knows the full picture of what John is planning. Based on his research, John now knows how he will structure his product.

John has a part-time employee named Bart who handles errands around the office. Bart knows of John's track record as a successful entrepreneur and would like to be just as successful. Bart tries to find out what product John is working on, but John keeps all of the documentation locked in his office files.

One afternoon, John is called away on a family emergency. Bart uses the opportunity to rifle through John's briefcase, find the key to the file cabinet, and review John's plans. The following week, Bart introduces the product and signs up many of the firms in the area to one-year contracts.

When John tries to introduce his product, he is locked out, at least for a year. He discovers that Bart holds all of the contracts and figures out that Bart must have stolen the idea. John is furious and vows to sue.

Alternate Scenario:

Bart and John have never met, but Bart knows of John's success and hears through the grapevine that John is researching a new product by questioning firms about their needs. Bart goes to John's building at 5 a.m. when the trash trucks arrive. Dressed in a business suit, he waits until the driver is loading the trash, and then runs up frantically explaining that he threw out important papers by mistake. He fishes through the trash, noting the phone message slips that indicate the names of a few of the people John has been in touch with.

Bart then phones the contacts pretending that he is John's assistant and has a few follow-up questions. He tells the contacts that there has been some confusion in the paperwork, and that in order to know which follow-up questions to ask, he needs to know what John has already asked. The contacts tell him the questions John has asked. By piecing the questions together, Bart can deduce John's plans. Bart introduces the product immediately and signs up many of the firms in the area to one-year contracts.

When John tries to introduce his product, he is locked out, at least for a year. Puzzled, John talks to some of his contacts and learns about the fake "follow-up" calls. He is furious and vows to sue.

Do you think the law should protect John? If so, why? (I am not asking you what the law is; I am asking you what you think the law should be and why.)