

I. TRADE SECRETS, CONT.

A. DUANE JONES

1. EMPLOYEES HAVE A DUTY OF LOYALTY TO THE FIRM
2. KEY FACT: EMPLOYEES PRE-SOLD CLIENTS WHILE THEY WERE STILL WORKING WITH PLAINTIFF, THEREBY VIOLATING THEIR DUTY OF LOYALTY.

B. ABILITY SEARCH

1. WHILE EMPLOYEES WERE THERE, THEY DID SOME SNEAKY STUFF, SUCH AS NOT PUTTING FIRM'S NAME ON THINGS, GETTING A CHECK SENT TO THEM.
2. RULE: IF CLIENTS CONTACT THE FORMER EMPLOYEE, THE BUSINESS NEED NOT BE REFUSED.
3. RULE: IT IS OK TO LEAVE YOUR FIRM, WE ENCOURAGE COMPETITION.
4. NOTE: JUDGES TEND TO BE FRIENDLY TO START UPS

C. HOW DO YOU DO THIS

1. LEAVE ON GOOD TERMS WITH YOUR CURRENT EMPLOYER
2. IF YOU LEAVE ON BAD TERMS, AFTER YOU LEAVE YOU CAN CONTACT YOUR OLD CLIENTS
 - a) YOU MAY NEED TO TELL THEM YOUR LEAVING
 - b) BE CAREFUL ABOUT SOLICITING EMPLOYEES
 - c) DON'T TAKE CLIENT LISTS + IT IS HARD TO MAKE A CASE AGAINST SOMEONE'S MEMORY.
3. IF YOU GET SUED, YOUR NEW EMPLOYER MAY FIRE YOU.

II. NON-COMPETITION AGREEMENT

A. WHITMEYER V. DOYLE → HIGHWAY GUARDRAILS COMPANY MAKES EMPLOYEE SIGN A VERY BROAD COVENANT NOT TO COMPLETE. A PRELIMINARY INJUNCTION WAS AWARDED BY TRIAL COURT.

1. RULE: THE AGREEMENT MUST PROTECT A LEGITIMATE INTEREST OF THE EMPLOYER
 - a) LEGITIMATE: TRADE SECRETS, BUT THIS IS A PUBLIC SECTOR CASE, NOT HAVING EMPLOYEES SOLICITED; GOODWILL AND CUSTOMER RELATIONS
 - b) NOT LEGITIMATE: PREVENTING COMPETITION, CHILLING EMPLOYMENT FROM WORKING
2. NOTE
 - a) SOME STATES TEAR UP BROAD AGREEMENTS, SOME RE-WRITE TERMS
3. HOW LONG IS TOO LONG
 - a) IT DEPENDS ON THE INDUSTRY
 - b) WAS IT NEGOTIATED
4. GEOGRAPHY
 - a) LOOK AT THE UNDERLYING BUSINESS'S MODEL - SOMETIMES ITS THE WHOLE WORLD AND SOMETIMES ITS KENDALL SQUARE.

III. CHOICE OF LAW

- A. GENERAL RULE: SITE OF EMPLOYMENT GOVERNS
- B. CAN BE DETERMINED BY CONTRACT

III. BREACH

- A. SMALL BREACH → OPPORTUNITY TO CURE
- B. MATERIAL BREACH → YOU CAN WALK AWAY, IF YOU WANT TO

IV. DAMAGES

A. IF THERE IS A MATERIAL BREACH OR FAILURE TO CURE, NON-BREACHING PARTY IS ENTITLED TO DAMAGES.

1. DAMAGES - MONEY

a) SPECIFIC PERFORMANCE: WHEN MONEY WON'T MAKE THE PARTY WHOLE, THE COURT IN RARE CIRCUMSTANCES WILL ORDER THE COMPLETION OF THE K.

B. DELCHI

1. DELCHI IS AWARDED THE COSTS OF REFITTING NON-CONFIRMING GOODS, AND THE COSTS OF GETTING REPLACEMENT GOODS FASTER, AND THE COSTS OF HANDLING NON-CONFIRMING GOODS.

2. LOST PROFITS → WHILE DOUBLE DIPPING IS NOT PERMITTED, LOST PROFITS ARE RECOVERABLE IF THEY CAN BE SHOWN WITH REASONABLE CERTAINTY.

a) SHOW EXISTING CONTRACTS

b) COURTS ARE RELUCTANT TO GIVE BIG FUTURE PROFITS AWARDS

3. WHAT IF DELCHI HAD GONE BANKRUPT?

a) IN GENERAL, YOU WON'T RECOVER HERE.

C. MITIGATION OF DAMAGES → THE NON-BREACHING PARTY HAS A DUTY TO KEEP THE MESS AS SMALL AS POSSIBLE.

D. EXPECTATION DAMAGES → BENEFIT OF THE DEAL. PUT THE PARTY WHERE IT WOULD HAVE BEEN ABSENT THE BREACH.

1. RELIANCE DAMAGES → GET YOUR MONEY BACK, THE COURT NIXES THE DEAL.

2. RESTITUTION → YOU GET YOUR MONEY BACK.

V. NOTE

- A. SEEM TO BE THE GOOD GUY