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The UTSA became effective in Pennsylvania:

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The PUSTA became effective in:

- A. 2003
- B. 2004
- C. 2005
- D. 2006

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What 2 categories were added to the trade secret definition?

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Which 2 New Categories?

- A. customer lists and drawings
- B. customer lists and methods
- C. customer lists and formulae
- D. customer lists and compilations

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What is a "trade secret"?

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### 12 Pa. Con. St. Ann. § 5302

- Information, including a formula, drawing, pattern, compilation including a customer list, program, device, method, technique or process that:
  - Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
  - Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

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An example of obtaining a trade secret by improper means is:

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### Improper Means?

- A. independent invention
- B. reverse engineering
- C. published literature
- D. aerial reconnaissance

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Which is not misappropriation?



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Not misappropriation?

- A. disclosing profit margins to a competitor under a confidentiality agreement
- B. stealing a secret formula
- C. emailing customer list to a future employer
- D. using competitor's customer list obtained during an interview

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Inevitable disclosure doctrine comes from statute's reference to:

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### Inevitable Disclosure is based on –

- A. injunctive relief
- B. threatened misappropriation
- C. actual misappropriation
- D. improper disclosure

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### Inevitable Disclosure

- *Bimbo Bakeries USA, Inc. v. Botticella*,  
613 F.3d 102 (3d Cir. 2010)
- “sufficient likelihood or  
substantial threat” standard

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Exemplary damages can  
be awarded if there is:

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### Exemplary damages if –

- A. actual misappropriation
- B. willful and wanton misappropriation
- C. willful and malicious misappropriation
- D. wanton and malicious misappropriation

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### Who awards exemplary damages?

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### Who awards exemplary damages?



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How is the court to be guided in awarding exemplary damages?

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Guidance for exemplary damages?

- A. no guidance provided
- B. award cannot exceed 2 times compensatory
- C. award cannot exceed 3 times compensatory
- D. award cannot exceed 4 times compensatory

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Under which of these scenarios would attorneys' fees be permitted?

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Attorneys fees if –

- A. plaintiff filed complaint in bad faith
- B. defendant filed a motion to terminate in bad faith
- C. plaintiff proved misappropriation
- D. plaintiff proved misappropriation was willful and malicious

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Are any of these time-barred?

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Time barred if –

- A. complaint filed 24 months after misappropriation
- B. complaint filed 24 months after misappropriation but within 12 months after discovery
- C. complaint filed 37 months after misappropriation
- D. complaint filed 37 months after misappropriation but within 12 months after discovery

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Are any of these trade secret-based claims preempted?

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Preempted?

- A. breach of contract
- B. unjust enrichment
- C. unfair competition
- D. conversion

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Our next topic is:



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Customer Lists

Are they protectible?

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Customer Lists protectible?

A. Yes  
B. No  
C. Depends

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What does it depend on?

- Who compiled it?
- How long did it take to compile?
- Is it public?
- Is it obtainable from industry sources?
- Can it be determined through social media?
- Is it computer-maintained, and if so, who has access?
- Is it obtainable directly from the customer?
- Is it pure pricing or internal profit information?
- Was it known by employee before employment?

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### Is it a Secret?

Plaintiff bears the burden

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### Sources of Public Disclosure

- Party's own website
- Party's press releases
- Internet
- Industry publications
- Industry conferences, seminars
- Patents

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### Business Info v. Technical Expertise

Two IBM cases, two different results -

- *Papermaster*, 2008 WL 4974508 (S.D.N.Y. Nov. 21, 2008) - injunction issued restraining IBM's top micro-processing expert from working for Apple
- *Johnson*, 629 F.Supp.2d 321, 335 (S.D.N.Y. 2009) - IBM's Vice President of Corporate Development and Strategy did "not have the sort of information that is considered quintessential trade secret information—detailed technical know-how, formulae, designs, or procedures" to be restrained from employment with Dell

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