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7 years

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Number of years  
PUTSA been in  
effect

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## PUTSA Modifications

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## Sections

- A. Definitions
- B. Willful and Malicious
- C. Expenses and Costs

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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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### 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 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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Customer Lists

Are they protectible?

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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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