

## Chapter 5

### *Business Information and Conflict of Interest*

#### CHAPTER SUMMARY

Like whistle-blowing, trade secrets and conflicts of interest involve a delicate balancing of the rights and interests of employers and employees, as well as the public at large. As a matter of public policy, trade secrets are protected through the implementation of laws that encourage conformance to rules of commercial morality. Trade secret protection can take many forms—arguments for property rights, fair competition, and a duty of confidentiality. For example, ownership protection is necessary because disputes can arise where an employee claims rights to a product developed during the course of employment. Noncompete clauses are highly favored by employers, but they are often struck down by the courts as a matter of public policy. Employers typically make the argument that noncompete clauses are necessary to protect trade secrets; however, fair competition issues often result from noncompete employment contracts that are overly broad and place unreasonable restrictions on competition. In reference to confidentiality, it is imperative for trade secret protection. Conflict of interest disputes occur when an employee breaches confidentiality and uses trade secret information to his/her advantage without permission from the employer.

#### CHAPTER OBJECTIVES

- 5.1: Identify the competing rights and considerations of fairness for employers and employees seeking to protect or use confidential information
- 5.2: Explain the concepts of intellectual property and trade secrets; the arguments surrounding questions of ownership, protection, and collection; and how these issues affect the employer-employee relationship
- 5.3: Describe the meaning of conflict of interest, the different types of conflict of interest, and ways by which business firms can manage these situations

#### SUGGESTED DISCUSSION PROMPTS

- 1. What are the reasons for thinking of trade secrets as property?
- 2. What does a company have to show to have its trade secrets protected as property?
- 3. What can companies do within legal and ethical bounds to learn from other companies?
- 4. How might considerations of fair competition be used either for or against the protection of intellectual property?
- 5. How did conflicts of interest arise in the Enron situation?

## ASSESSMENT FOR IN-CLASS USE

### *Multiple Choice Questions*

Choose the BEST possible answer for each of the following.

1. Courts have difficulty determining \_\_\_\_\_.
  - A. what constitutes a trade secret
  - B. whether trade secrets should be protected
  - C. why companies want to protect trade secrets
  - D. the extent to which trade secrets have been pursued

Correct Answer: A

5.2: Explain the concepts of intellectual property and trade secrets; the arguments surrounding questions of ownership, protection, and collection; and how these issues affect the employer-employee relationship

Topic/Concept: Proprietary Information

Difficulty Level: Easy

Skill Level: Understanding

2. The Economic Espionage Act of 1996 \_\_\_\_\_.
  - A. was primarily aimed at protecting against domestic spying
  - B. was primarily aimed at protecting foreign companies in the U.S.
  - C. has been effective in protecting against domestic spying
  - D. was the first law in the U.S. to protect trade secrets

Correct Answer: C

5.2: Explain the concepts of intellectual property and trade secrets; the arguments surrounding questions of ownership, protection, and collection; and how these issues affect the employer-employee relationship

Topic/Concept: Proprietary Information

Difficulty Level: Easy

Skill Level: Understanding

3. The question of intellectual property ownership becomes most complicated when \_\_\_\_\_.
  - A. the intellectual property involves new technology
  - B. an inventor works for a company that manufactures the invention
  - C. the intellectual property is not related to work performed for the employer
  - D. the inventor owns the right to many different patents

Correct Answer: B

5.2: Explain the concepts of intellectual property and trade secrets; the arguments surrounding questions of ownership, protection, and collection; and how these issues

affect the employer-employee relationship  
Topic/Concept: Proprietary Information  
Difficulty Level: Easy  
Skill Level: Understanding

4. The *Wexler* case found that Greenberg had the right to his own formulas because \_\_\_\_\_.
- A. it would be unfair for his old company to use those formulas
  - B. his new company did not own the rights to the formulas
  - C. no one owned the rights to the formulas that Greenberg had created
  - D. not allowing him to do so would unfairly restrict his ability to compete with the new company

Correct Answer: D

5.2: Explain the concepts of intellectual property and trade secrets; the arguments surrounding questions of ownership, protection, and collection; and how these issues affect the employer-employee relationship  
Topic/Concept: Proprietary Information  
Difficulty Level: Easy  
Skill Level: Understanding

5. One source of the idea that trade secrets are a form of property is the view that \_\_\_\_\_.
- A. trade should always be free and unrestricted
  - B. each person owns the product of his/her labor
  - C. property should be had in common by all people
  - D. companies should be able to make a profit however they can

Correct Answer: B

5.2: Explain the concepts of intellectual property and trade secrets; the arguments surrounding questions of ownership, protection, and collection; and how these issues affect the employer-employee relationship  
Topic/Concept: Proprietary Information  
Difficulty Level: Easy  
Skill Level: Understanding

6. Why are legal restrictions placed on noncompetition agreements?
- A. Most employees stay with the same company for a long time.
  - B. Most employees are not in a position to use trade secrets with another company
  - C. They are difficult to enforce.
  - D. They can result in difficulty for an employee to subsequently find suitable work.

Correct Answer: D

5.1: Identify the competing rights and considerations of fairness for employers and

employees seeking to protect or use confidential information  
Topic/Concept: Confidential Information  
Difficulty Level: Easy  
Skill Level: Understanding

7. Trade-secret protection agreements that are based on confidentiality assume that \_\_\_\_\_.
- A. the trade secret was not developed by the employee
  - B. the employee will not work for other companies
  - C. the employer is involved in a high-tech industry
  - D. the employee will eventually work for a competitor

Correct Answer: A

5.2: Explain the concepts of intellectual property and trade secrets; the arguments surrounding questions of ownership, protection, and collection; and how these issues affect the employer-employee relationship

Topic/Concept: Proprietary Information  
Difficulty Level: Easy  
Skill Level: Understanding

8. If a company gains information on a company through misrepresentation, this is a breach of \_\_\_\_\_.
- A. property
  - B. honesty
  - C. trust
  - D. privacy

Correct Answer: B

5.2: Explain the concepts of intellectual property and trade secrets; the arguments surrounding questions of ownership, protection, and collection; and how these issues affect the employer-employee relationship

Topic/Concept: Proprietary Information  
Difficulty Level: Easy  
Skill Level: Understanding

9. Conflicts of interest are an ethical problem for a business because they \_\_\_\_\_.
- A. violate an individual's right to privacy
  - B. create profits that would be owed to other companies instead
  - C. create incentive for company representatives to act against others' best interest
  - D. prevent the company from succeeding as well as it might otherwise

Correct Answer: C

5.3: Describe the meaning of conflict of interest, the different types of conflict of interest, and ways by which business firms can manage these situations

Topic/Concept: Conflict of Interest  
Difficulty Level: Easy  
Skill Level: Understanding

10. Arthur Andersen's double role with Enron represented a conflict of interest because

- \_\_\_\_\_.
- A. Arthur Andersen made too much of a profit from one client
  - B. Enron executives did not reveal everything to Arthur Andersen that they should have
  - C. Arthur Andersen had incentive not to make criticisms that would hurt its consulting role
  - D. Arthur Andersen did not know Enron well enough to be both consulting and auditing the company

Correct Answer: C

5.3: Describe the meaning of conflict of interest, the different types of conflict of interest, and ways by which business firms can manage these situations

Topic/Concept: Conflict of Interest  
Difficulty Level: Easy  
Skill Level: Understanding

### ***Essay Questions***

1. What is a trade secret, and why is the government invested in helping companies protect them?

5.1: Identify the competing rights and considerations of fairness for employers and employees seeking to protect or use confidential information

Topic/Concept: Confidential Information  
Difficulty Level: Easy  
Skill Level: Understanding

2. What are the ethical and legal limits that have been placed on competitor intelligence gathering by companies?

5.2: Explain the concepts of intellectual property and trade secrets; the arguments surrounding questions of ownership, protection, and collection; and how these issues affect the employer-employee relationship

Topic/Concept: Proprietary Information  
Difficulty Level: Easy  
Skill Level: Understanding

3. How do conflicts of interest arise in business, and what can be done to prevent them?

5.3: Describe the meaning of conflict of interest, the different types of conflict of interest, and ways by which business firms can manage these situations

Topic/Concept: Conflict of Interest

Difficulty Level: Moderate

Skill Level: Evaluation