

**FEBRUARY 2011**

---

**INSTRUCTIONS FOR THE  
ILLINOIS ESSAY EXAMINATION**

**You are required to answer all 3 questions. Each answer booklet is numbered to correspond with a particular question; e.g., answer booklet number 1 is to be used to answer question number 1. You must use the proper answer booklet for your answer. You must confine your answer to one answer booklet, and you must confine your writing to the printed lines; do not exceed ONE handwritten line per printed line. *Portions of answers that exceed these limitations, including portions of answers that appear on the inside covers of the answer booklets, will be disregarded by the Board.* You may, however, use the inside covers of the answer booklets to make notes or outline your answers.**

1. Randy Scott ("Scott") made a living by forging checks. Scott operated a sophisticated check-forging mill in his apartment in Waukegan, Illinois. The Waukegan Police Department's Fraud Unit had been investigating a string of forged checks in the area when it received information linking Scott to the forgeries. One of the tellers with whom Scott spoke while depositing a forged check later spotted him at a local restaurant. The teller watched Scott leave the restaurant and promptly reported Scott's license plate number to the Fraud Unit.

Coincidentally, before Fraud Unit investigators could secure a search warrant for Scott's apartment, Scott's landlord - who had also been the victim of Scott's forgeries - took matters into his own hands. Thinking he would find something valuable enough to sell to recoup his losses, the landlord secretly entered Scott's apartment and removed a sophisticated color laser printer. Filled with remorse, the landlord took the machine to the Waukegan Police - where he sought to justify his actions by pointing to the thousands of dollars

(Question continued on next page)

he had lost to Scott's phony rent checks. Fraud Unit investigators quickly realized the machine was capable of producing the high-quality, color bogus checks they were investigating. Based on that new information, the Fraud Unit abandoned its plans to secure a search warrant and elected just to arrest Scott.

At 3:30 p.m. on May 3, 2010, Fraud Unit officers arrested Scott outside his apartment on suspicion of felony check fraud and transported him to Waukegan Police headquarters. By 5:30 p.m., Scott, who was handcuffed in an interrogation room, was read his Miranda rights. He waived those rights and voluntarily agreed to answer the investigators' questions. Starting at 5:40 p.m., Scott gave a detailed statement admitting responsibility for over \$750,000 in check fraud. At 7:00 p.m., Scott was placed in a lineup with four other men who shared his general physical appearance. Three tellers from some of the banks that Scott had defrauded correctly identified him during separate, non-suggestive lineups. Scott never asked the officers for a lawyer or otherwise invoked his right to counsel that day.

Unbeknownst to Scott, his girlfriend, who had seen him being placed in the back of a Waukegan Police vehicle, immediately called her father, a local defense attorney ("Attorney"). Attorney arrived at Waukegan Police headquarters at 4:30 p.m., announced his representation of Scott, and asked for access to his client. Attorney was not permitted to speak with Scott until the last lineup was conclude at 7:30 p.m.

The next day, Scott was formally charged with felony check fraud. Pointing to his inability to speak with his client until 7:30 p.m. on the day of the arrest, Attorney filed motions to suppress Scott's confession and to suppress any evidence concerning the identifications made during the lineups. Attorney also filed a Fourth Amendment motion to bar any evidence at trial related to the laser printer. The court denied all three motions.

- (a) Did the court err by denying Scott's motion to suppress his confession? Explain your answer.

(Question continued on next page)

- (b) Did the court err by denying Scott's motion to bar the introduction of any evidence regarding the identifications made during the lineups? Explain your answer.
  - (c) Did the court err by denying Scott's motion to bar the introduction of any evidence related to the laser printer? Explain your answer.
- 

2. Seki is a chef trained in Japan. He wants to open a sushi restaurant in downtown Coal City, a non-home rule municipality of less than 500,000 population located in Grand County, Illinois. He purchased a building on a lot in Coal City for the restaurant. If he should open the restaurant in the building, the restaurant's floor area would be 2,000 square feet. Seki had earlier calculated that the restaurant's floor area must be at least 2,000 square feet so that he could seat enough customers to make the restaurant profitable.

Coal City's Zoning Ordinance requires that a restaurant have eight off-street parking spaces for each 1,000 square feet of floor area. Under the zoning ordinance, sixteen off-street parking spaces would be required for a restaurant with a floor area of 2,000 square feet. When Seki purchased the building and lot, the parking area (on the portion of the lot behind the building) contained sixteen parking spaces. One week later, an old coal mine shaft below the parking area collapsed, thereby lowering the surface of four of the spaces by ten feet and rendering them useless for parking. The remaining parking area behind Seki's building contains only twelve off-street parking spaces: that is, four spaces short of the required amount.

Coal City, as permitted by §11-13-5 of the Illinois Municipal Code (65 ILCS 5/11-13-5), has vested in its Zoning Board of Appeals (hereinafter called the "ZBA") the "authority to determine and approve variations" from the requirements of the zoning ordinance. The ZBA's decision on an application for a zoning variance is thus a "final administrative decision" which - under §11-13-13 of the

(Question continued on next page)

Illinois Municipal Code - is "subject to judicial review pursuant to the provisions of the Administrative Review Law [735 ILCS 5/3-101 *et seq.*]." The ZBA has seven members, whose last names, respectively, are Art, Barnes, Charles, Dunn, Erb, Fox, and George. Art is the chairman of the ZBA.

Seki applied to the ZBA for a variance from the Zoning Ordinance's requirement of off-street parking spaces - from sixteen down to twelve - so that he could open his restaurant in the building. The ZBA held a public hearing on the application for variance. Three other restaurant owners - Jones, Kranz, and Lane - attended the public hearing. Jones spoke and filed a *written objection* to Seki's application for a variance. Kranz spoke and filed a *written statement in favor* of Seki's application for a variance. Lane merely sat in the audience and said nothing, signed nothing, and filed nothing. At the hearing, Seki presented evidence that (1) the building could not yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in that zone; (2) his plight is due to unique circumstances; and (3) the variance, if granted, would not alter the essential character of the downtown neighborhood.

Nevertheless, the ZBA denied Seki's application for variance in a decision issued on Monday, June 1, 2009. The ZBA mailed the decision to Seki on Tuesday, June 2 by depositing the decision in the United States mail, in a sealed envelope with postage prepaid, addressed to Seki at his residence. Seki received that decision in the mail on Wednesday, June 3.

Seki filed a complaint for administrative review of the ZBA's decision in the Circuit Court of Grand County on Tuesday, July 7, 2009: that is, thirty-five days after the ZBA had mailed the decision. In the complaint for administrative review, Seki named, as defendant, only Art, in his official capacity as chairman of the ZBA. Seki also filed, on the same day, a written request that (1) the Circuit Clerk immediately issue a summons to the named defendant and (2) the Circuit Clerk send the summons to the named defendant by certified or registered mail. The Circuit Clerk did not issue and mail

(Question continued on next page)

the summons until Wednesday, July 22: that is, fifteen days after Seki had filed his written request for the issuance of the summons. The named defendant received the summons on Friday, July 24.

- (a) Did Seki timely file the complaint for administrative review, in compliance with the requirements of the Administrative Review Law (735 ILCS 5/3-101 *et seq.*)? Explain your answer.
- (b) Did Seki name as defendants, in the complaint for administrative review, all of the entities and persons that he should have named in order to comply with the requirements of the Administrative Review Law (735 ILCS 5/3-101 *et seq.*)? Explain your answer.
- (c) Assume that, during the course of the administrative review action, the Circuit Court determines that Seki should have named, in the complaint for administrative review, one or more other entities or persons as additional defendants. What order should the Circuit Court then enter in the administrative review action? Explain your answer.
- (d) Should the Circuit Clerk's delay, in issuing the summons to the defendant named in the complaint for administrative review, adversely affect Seki's ability to proceed with his administrative review action? Explain your answer.

---

3. Patrick was a certified public accountant in Littleburg, Herndon County, Illinois. Patrick drew clients from an area within 25 miles of his office in Littleburg, and he had no clients who lived, or had their offices, more than 25 miles away from his office. His principal client for the past 10 years had been, and still was, Middleton Electric Cooperative, Inc. ("MEC"). MEC's main office was located in Middleton, 15 miles from Littleburg. Patrick obtained MEC as

(Question continued on next page)

a regular client with difficulty because of the competition among certified public accountants: that is, for four years (a period usual in his client development), Patrick reduced, by the total amount of \$10,000, his accounting bills to MEC below what would have been fair and reasonable charges for his services.

Patrick hired another certified public accountant, Dan, to help him in his accounting practice. Patrick and Dan entered into a written contract of employment for a period of three years. The contract contained a *non-competition clause*, which provided that - for 24 months after the termination of Dan's employment - Dan would not maintain an accounting office or do any accounting work within 100 miles of Patrick's office in Littleburg. The contract also contained an *activity restraint*, which defined "long-term client" to mean a person or entity that had been an accounting client of Patrick for at least five years as of the last day of Dan's employment, and which provided that - for 24 months after the termination of Dan's employment - Dan would not solicit accounting business from, or handle accounting business for, any of Patrick's long-term clients. If Patrick had not employed Dan, Dan would not have had contact with MEC (or any other client of Patrick), but, as it was, Dan worked on MEC's accounting business frequently. When Dan's contract of employment expired, MEC had been an accounting client of Patrick for 13 years.

The day after Dan's contract of employment expired, Dan set up his own accounting practice in Middleton. A week later, Dan persuaded MEC to switch all of its accounting business to him.

Patrick filed a complaint in the Circuit Court of Herndon County to enjoin Dan (1) *on the basis of the non-competition clause*, from maintaining an accounting office and from doing any accounting work within 100 miles of Patrick's office for 24 months after the termination of Dan's employment, and (2) *on the basis of the activity restraint*, from handling the accounting business of MEC for 24 months after the termination of Dan's employment.

Patrick filed a motion for a preliminary injunction against Dan,

*on the basis of the activity restraint*, to prevent Dan from handling MEC's accounting business while the case was pending for trial. At the trial of the case, Patrick did not ask the trial court to consider enforcing the *non-competition clause* within a distance smaller than 100 miles from his office, but sought to enforce the *non-competition clause* as written.

- (a) Was the *non-competition clause* in the employment contract enforceable? Explain your answer.
- (b) Was the *activity restraint* in the employment contract enforceable with respect to Dan's performing accounting work for MEC? Explain your answer.
- (c) Assume for the purpose of answering this subpart that the *activity restraint* in the employment contract was enforceable. What elements did Patrick have to prove in order to demonstrate that he was entitled to a *preliminary* injunction on the *activity restraint* against Dan? Explain your answer.