

Professor Layton

Instructions

This exam consists of 6 questions, one of them with separately-graded subparts. There are a total of 100 points possible. (This will be scaled back to 60 points for your final grade; remember, the rest of the grade is participation and papers. Fortunately the class did a great job during the semester!) You should read these instructions and the entire exam before beginning to answer any question.

This is an open-book exam. But there is no advantage to going beyond the Missouri Constitution book, your class notes, and the casebook -- with the exception of Question 3, where you may also want to refer to the Missouri Rules of Civil Procedure (available on line at <http://www.courts.mo.gov/page.asp?id=46>). Citing cases, statutes, etc., beyond the listed materials will *not* earn you a higher grade.

At the beginning of each question, I suggest maximum word count for and state the number of points allocated to that question. The word count is mostly just a guideline; you shouldn't have to use that many words to get full credit for your answer. But I reserve the right to mark down your answer if you are more than 20% above the suggested word count. Again, the points total 100. Consider the points allocated to each question in allocating your time and attention to each question.

Remember that I have to actually read your answers. If you do not type them, please write *very* legibly. Do *not* use your name on any of the papers you submit. Use **only** your exam number. **Please start the answer to each question on a new page**, and put your exam number and the question number on *every* page – just in case your exam comes apart and I need to reassemble it. (No, that's never happened in my years of teaching, but I'm a little paranoid about it.)

Good luck!

Professor Layton

1. (10 points; 700 words) This question is in reference to Art. XIII section 3(2) of the Missouri Constitution. Governor Blunt (really!) has not appointed any members to the Commission. Thus fewer than half of the Commission positions are occupied. Nonetheless, by Dec. 1, 2008, the Commission filed a salary schedule with the Secretary of State and the Revisor of Statutes; the only salary hike, other than for cost of living, in the 2008 schedule is for associate circuit judges. Assume that the General Assembly does NOT reject the schedule. There has been litigation filed contesting the validity or effectiveness of the 2008 Schedule. Write a brief memo regarding the arguments that could be made for and against its validity. You can take the position either of an associate circuit judge (i.e., for validity) or of a taxpayer (against validity), but please state at the beginning of your answer which role you're taking.
2. An amendment has been proposed by initiative. It would amend the Missouri Constitution to read (with the new language underlined):

Article I, Section 25. That all elections shall be free and open; that no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage, and that voters shall not be required to identify themselves with photographic identification at the polls, unless the General Assembly, in requiring such identification and specifying its form, provides that such forms of identification shall be given to all registered voters free of charge.

Article VIII Section 7. Qualified electors of the state who are absent, whether within or without the state, may be enabled by general law to vote at all elections by the people. All registered voters shall be allowed to vote during a period of ten days beginning two weeks prior to each general election. The General Assembly shall set out requirements for such polling places, which shall number not less than one location per county for every 50,000 registered voters. There shall stand appropriated for each general election \$1,000,000 to be used to allocated among the counties to open such polling places.

- (a) (15 points; 800 words) The proponents have submitted to the Secretary of State sufficient signatures to place it on the ballot. Assume you are hired by a group opposing the amendment. Set out and explain the principal argument(s) you would make on behalf of those opponents in a suit seeking to prevent Amendment 1 from appearing on the ballot.
- (b) (10 points; 500 words) Explain to what degree the proposed language is self-executing, and why, and whether any portion of it could be described as directory rather than mandatory, and why.
3. (24 points; 1000 words) During the last days of the legislative session, the legislature took up H.B. 1, an act amending and adding provisions “relating to public safety.” Until that point, H.B. 1 consisted of provisions relating to: the certification of peace officers (including police officers and deputy sheriffs); liability for injuries that occur on public streets or roads; and licensing of large equipment, such as tractors, that driven (slowly) on public highways. The legislature changed the title to “relating to political subdivisions” and added this new section 15:

15. No charter city with a population of more than 38,000 and less than 40,000 inhabitants, and with facilities occupied by more than 10,000 state employees, shall require, for a subdivision plat or a building or occupancy permit, the construction of sidewalks except where sidewalks already exist on an adjacent parcel.

You are an assistant city attorney for Jefferson City, which has a city charter. Professor Layton’s wife, a member of the city council and a strong sidewalk proponent, dislikes the new provision and wants to know if there is any basis for saying it is invalid as applied to Jefferson City. Prepare a brief memo outlining and explaining any argument(s) you think could be made were Jefferson City to challenge the provision as it applies to the City.

4. (24 points; 1000 words) The legislature has also passed S.B. 1, which reads:

AN ACT adding 3 new sections to the Revised Statutes of Missouri, relating to courts:

1. In computing any period of time for a filing in any court prescribed or allowed by any statute or rule of court, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, a legal holiday, or a day on which the court is closed pursuant to an order issued by the presiding or chief judge, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday.
2. Circuit courts shall allow testimony by affidavit in any juvenile matter, so long as the affiant is made available for examination by deposition by all parties at least seven days before the matter is taken under submission.
3. Parents of any juvenile adjudicated to have been guilty of a felony shall be required to complete an eight-week parenting course, to be provided by the Missouri Department of Mental Health.
4. The University of Missouri shall employ one person at the Associate Professor level or above who shall spend half of his or her time developing course materials and instructing teachers for the course required in section 3.

You are an intern in the office of the Counsel to the Governor. Before the Counsel makes a recommendation to the Governor whether to sign the bill, he asks you to consider whether – or to what extent – S.B. 1 is constitutional. Prepare a brief memorandum summarizing your conclusions and reasoning.

5. (2 points; 15 words.) In Missouri, at what stage of a proceeding do you have to raise a possible constitutional question?

6. (25 points; 1000 words) Could the rate of formal revision and amendment of the state constitution within a state have any influence on judicial interpretation of the state constitution? Why or why not? And if so, how?