Missouri Essay Question 1
February 2006 Bar Examination
Missouri Civil Procedure

Glass King Corporation ("Glass King") has a contract with General Contractor. The contract may be terminated by the General Contractor for any reason on five (5) days notice.

General Contractor thinks Glass King is charging too much for its services. General Contractor contacts See Clearly Corporation ("See Clearly") and negotiates a better price.

As allowed by the contract, General Contractor gives Glass King five (5) days notice, and terminates the Glass King contract. General Contractor then enters into a contract with See Clearly.

A few days later, several Glass King employees call See Clearly about possible employment. The employees are unhappy at Glass King, and have heard See Clearly is a good place to work. The employees do not have employment contracts. See Clearly hires the employees.

Glass King knows See Clearly, the General Contractor, and the employees had every legal right to do what each has done. However, Glass King is angry and wants to "get even" with See Clearly.

Glass King tells Attorney what it knows, and that it wants to "get even" with See Clearly. Attorney agrees to file a two count Petition against See Clearly seeking $10,000,000.00 in damages. Attorney claims in Count I that See Clearly tortiously interfered with Glass King's contract with General Contractor, and claims in Count II that See Clearly engaged in unfair trade practices by hiring some of Glass King's employees. Attorney tells Glass King the lawsuit will either put See Clearly out of business, or will at least make See Clearly miserable. Glass King is pleased.

See Clearly is a Missouri corporation. A process server arrives at See Clearly's business to serve the Petition. The process server hands the Summons and Petition to a person entering the business through a door marked "employee entrance." The process server files a return of service that states the Summons and Petition were served on a person in charge of See Clearly's office.

The person who received the Summons and Petition was a new mail room clerk arriving for his first day of work. The mail room clerk is so nervous, he forgets to give the Summons and Petition to anyone at See Clearly. See Clearly, unaware of the lawsuit, fails to file a responsive pleading.

Glass King takes a default judgment against See Clearly for $10,000,000.00. See Clearly learns of the default judgment nine months after its entry, when See Clearly's bank accounts are liened.

1. See Clearly immediately seeks your help to set aside the default judgment. What must your motion to set aside the default judgment establish? Will you be successful? Explain.

For the next question, assume the time to file a responsive pleading has not run, and a default judgment has not been entered. You file an Answer and then a Motion for Summary Judgment. Glass King opposes the Motion. The trial court enters an Order granting See Clearly summary judgment on Count I of Glass King's Petition, the claim for tortious interference with contract. Count II remains pending.

2. Can Glass King appeal from the Order granting See Clearly summary judgment on Count I before Count II is disposed? Why? How, if at all, does the manner in which the Order is written effect your answer?

For the next two questions, assume you learn through discovery that Glass King has bragged to its remaining employees that though See Clearly did nothing wrong, Glass King and Attorney filed the lawsuit to try to put See Clearly out of business.

3. Did Glass King's Attorney violate any Rule of civil procedure in signing and filing the Petition? Explain.

4. If you believe the Rule has been violated, what must you do to seek relief in this case for See Clearly under the Rule? Explain.

Missouri Essay Question 2
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Remedies

Disposable Energy is in the business of purchasing a special type of oil on the spot market and reselling that oil to manufacturers in an industry for which that oil is essential to the manufacturers' operations. Production Enterprises is one of the manufacturers requiring this oil for its daily operations. Production is in a very competitive industry, and the market for this oil is tight. Because of limited supplies and spiking demand, Production's regular supplier of this oil sometimes is unable to supply all the oil Production needs, and Production has to seek additional oil from companies like Disposable, known as "spot suppliers."

Tired of negotiating with spot suppliers in response to emergency shortages, Production enters into a written supply contract with Disposable. Disposable agrees to sell to Production all the oil Production needs if its normal supplier is unable to provide sufficient oil. In exchange for a one-time "service fee" of $10 million to be paid by Production, Disposable agrees to sell the oil for a fixed price per barrel, regardless of whatever spot market price that Disposable may have to pay for the oil. Production is to pay the fixed price per barrel in addition to the initial service fee. The contract expressly refers to the parties' understanding that Production will lose customers and will not survive for more than a couple of weeks if its oil supply is cut off. The contract has a two-year term.

During the negotiations and in deciding to enter into the contract, both Disposal and Production rely on the same industry expert's report of historical and projected oil supplies and spot market prices.

Production pays Disposable the $10 million service fee. Two months after the parties execute the contract, Production's supplier tells Production that it will be unable to meet Production's needs for several months, and Production makes a demand on Disposable under the contract. For the first month, Disposal provides Production the needed oil and Production pays Disposable $5million for that oil, based on the fixed price agreed to in the contract . However, the spot market price turns out to be far greater than the projections in the expert's report, and Disposable has to pay $12 million for the oil that it has to sell to Production for $5 million.

1. Faced with the prospect of losing millions of dollars if it continues to supply oil to Production, Disposable tells Production that it will not be supplying any more oil under the

contract. Production decides to sue Disposable. Other than a request for an injunction, what claim should Production make to the court to force Disposable to supply oil pursuant to the contract? What must Production plead and prove to obtain that relief under that claim? State whether Production is entitled to prevail on that claim and explain your answer.

2. After the lawsuit is filed, Disposable discovers that the industry expert erroneously based his report on completely inaccurate data about oil supplies and spot market prices. Based on this discovery about the industry expert's report, what claim for relief should Disposable assert in a counterclaim in an attempt to avoid its oil supply obligations under the contract and what must it plead and prove to obtain that relief?

3. If the court grants Disposable's request for relief discussed in paragraph 2, will either Disposable or Production owe the other money, and, if so, how much? Explain.

4. Unrelated to Disposable's dealings with Production, Disposable's president asks a consultant to conduct an ongoing analysis of the marketing activities of Disposables' competitors and prepare periodic reports on those activities. There is no written agreement between Disposable and the consultant. After three months of work, the consultant prepares and presents his first report to Disposable, which relies heavily on the report in developing a successful marketing program. The consultant sends a bill to Disposable for the work based on hour rates normally charged by consultants in the industry. Disposable refuses to pay the bill, claiming that it had no contract with the consultant for the work performed. In addition to a breach of contract claim, what other cause of action can the consultant assert against Disposable to recover for the work performed and what must he plead and prove to recover under that cause of action?

Missouri Essay Question 3
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Administrative Law

The Acme Water Company provides treated and purified water in Acme County Missouri. Acme Water Company is regulated by the "Missouri Water Commission" and is thus allowed to use the roads of the state of Missouri for the placement of their water pipes. Missouri Law provides that, once a water company obtains certification for use of the roads, then the Missouri Water Commission is delegated the authority to regulate the prices it charges for the water it delivers. An applicable statute prohibits any regulated water company from unreasonably discriminating among its customers in setting the price for water and empowers the Missouri Water Commission to make determinations on this issue.

A dispute has arisen between Acme Water and Small Customer. Small Customer has ten business locations. Each of Small Customer's locations uses 1000 gallons of water per day for a total of 10,000 gallons per day. Acme Water charges Small Customer ten Cents per gallon of water delivered to each location.

Big Deal, Small Customer's competitor, has only one location. Big Deal uses a total of 10,000 gallons of water per day at its single location. At Big Deal's insistence, Acme only charges Big Deal two cents per gallon of water.

THE QUESTIONS

1. Small Customer has discovered this pricing discrepancy and has instructed its lawyers to bring an action against Acme Water before the Missouri Water Commission to seek a determination whether Acme Water's pricing is illegal. Acme Water contests this action. What type of hearing or proceeding must be conducted by the Missouri Water Commission to determine this dispute? Explain your answer fully.

2. Can Big Deal intervene in this action? What must it establish to do so? Explain.

Assume for the next question that the Missouri Water Commission, after a properly conducted hearing, enters an Order that finds: (1) the Missouri Water Commission has the legal authority to resolve disputes involving claims of illegal pricing; (2) Acme is charging two different rates for water it supplies its customers; and (3) Acme has unreasonably discriminated amongst its customers in setting the price it charges for water.

3. Where would Acme seek review of the Missouri Water Commission's Order? What would be the scope of review applicable to each of the Commission's findings? Explain your answer fully.

Missouri Essay Question 4
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Family Law

Terry and Pat meet at a social gathering and decide within a few weeks to get married. Terry is a successful business owner and has substantial money and property assets. Pat has no significant monetary or property assets. On the way to the courthouse to get married, Terry tells Pat that they need to stop by the office of Terry's lawyer to sign some papers. Terry offers no further explanation. At the lawyer's office the lawyer hands Terry and Pat a document entitled "Prenuptial Agreement between Terry and Pat." The lawyer says, "Sign here." No further discussion occurs. Terry and Pat both sign the agreement. They leave the lawyer's office, go to the courthouse and get married. Four years later Pat files for divorce. The prenuptial agreement states that for every year of marriage Pat is to receive $100,000 in satisfaction of any claim with respect to the division of property. The agreement is silent on the issue of maintenance.

1. What are the requirements for a valid and enforceable prenuptial agreement?

2. Is this agreement valid and enforceable? Why or why not?

3. Pat makes a request for maintenance in the divorce proceeding. What should the court consider in its determination of whether to award maintenance to Pat?