



California
Bar
Examination

Performance Tests
and
Selected Answers

July 2003

PERFORMANCE TESTS AND SELECTED ANSWERS

JULY 2003 CALIFORNIA BAR EXAMINATION

This publication contains two performance tests from the July 2003 California Bar Examination and two selected answers to each test.

The answers received good grades and were written by applicants who passed the examination. The answers were produced as submitted, except that minor corrections in spelling and punctuation were made for ease in reading. The answers are reproduced here with the consent of their authors and may not be reprinted.

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**TUESDAY AFTERNOON
JULY 29, 2003**



**California
Bar
Examination**

**Performance Test A
INSTRUCTIONS AND FILE**

IN RE MARRIAGE OF NITTARDI

INSTRUCTIONS i

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IN RE MARRIAGE OF NITTARDI

INSTRUCTIONS

1. You will have three hours to complete this session of the examination. This performance test is designed to evaluate your ability to handle a select number of legal authorities in the context of a factual problem involving a client.
2. The problem is set in the fictional State of Columbia, one of the United States.
3. You will have two sets of materials with which to work: a **File** and a **Library**.
4. The **File** contains factual materials about your case. The first document is a memorandum containing the instructions for the tasks you are to complete.
5. The **Library** contains the legal authorities needed to complete the tasks. The case reports may be real, modified, or written solely for the purpose of this performance test. If the cases appear familiar to you, do not assume that they are precisely the same as you have read before. Read each thoroughly, as if it were new to you. You should assume that the cases were decided in the jurisdictions and on the dates shown. In citing cases from the **Library**, you may use abbreviations and omit page citations.
6. Your answer must be written in the answer book provided. You should concentrate on the materials provided, but you should also bring to bear on the problem your general knowledge of the law. What you have learned in law school and elsewhere provides the general background for analyzing the problem; the **File** and **Library** provide the specific materials with which you must work.
7. Although there are no restrictions on how you apportion your time, you should probably allocate at least 90 minutes to reading and organizing before you begin writing your response.
8. Your response will be graded on its compliance with instructions and on its content, thoroughness, and organization.

RYCHLY & KELLY, LLP
Attorneys At Law
220 McGEE AVENUE
BRADFIELD, COLUMBIA 09654

MEMORANDUM

TO: Applicant
FROM: Mary Rychly
DATE: July 29, 2003
SUBJECT: *In re Marriage of Nittardi*

Yesterday, we were retained by Pier Nittardi, who has asked us to advise him in a custody matter involving his former wife, Jean Dillon Nittardi, and their daughter, Silvia Nittardi. Mrs. Nittardi has expressed intention to move with Silvia from Columbia to Dakota in little more than a week. I have told Pier that I will send him an opinion letter respecting his legal position.

The facts bearing on this matter can readily be gleaned from an interview that I conducted with Mr. Nittardi yesterday, a judgment of dissolution, two custody orders, a memorandum by one of our paralegals, and a letter that Mrs. Nittardi's attorney sent to Mr. Nittardi some days ago.

Please prepare, for my signature, an opinion letter to Mr. Nittardi in accordance with the firm's guidelines.

RYCHLY & KELLY, LLP
Attorneys At Law
220 MCGEE AVENUE
BRADFIELD, COLUMBIA 09654

MEMORANDUM

TO: All Attorneys
FROM: Executive Committee
DATE: September 27, 2001
SUBJECT: *Opinion Letter Guidelines*

Often the firm's attorneys must prepare an opinion letter to communicate its views to a client. An opinion letter should follow this format:

- State your understanding of the client's goal or goals.
- Indicate what action the client may take to achieve such goal or goals.
- Analyze the client's legal position objectively, in light of the applicable law and the relevant facts, and resolve each of the issues implicated, arriving at a conclusion, and identifying the degree of certainty, as to each.
- Remember that many opinion letters are written to lay clients. Although you must discuss the law, you should do so as clearly and straightforwardly as possible.

INTERVIEW OF PIER NITTARDI

MARY RYCHLY: Mr. Nittardi, with your permission, I'll be tape-recording our conversation today. Is that agreeable?

PIER NITTARDI: Yes, that is alright.

RYCHLY: Prior to turning on the tape recorder, we executed the standard written retainer agreement provided by the Columbia State Bar.

NITTARDI: Yes, we did. They are the same kinds of papers that I have signed for the lawyers who represent my restaurant in land use and other matters.

RYCHLY: That's correct. You gave me a copy of three documents: a "Judgment of Dissolution; Stipulated Custody Order"; a "Stipulated Temporary Custody Order"; and a letter to you from Lucien Zachary, of Zachary, Sidney & Rose, a law firm down the street here in Bradfield.

NITTARDI: Right.

RYCHLY: Mr. Nittardi, why don't we go over the facts? You've told me some. Let's get them all.

NITTARDI: Very well. My name is Pier Nittardi — P-I-E-R N-I-T-T-A-R-D-I. I am 39 years old. I was born in Pescara, in the Abruzzi, in Italy. I am a naturalized American citizen. My wife — my former wife — is Jean Nittardi. Her maiden name was Dillon. She is 37. We have a daughter, Silvia, who is 12. She was born in this country.

RYCHLY: Can you tell me something about how you and Jean met?

NITTARDI: Surely. It was in 1987. I owned a small *trattoria* in Rome, a restaurant, not at all fancy. Jean had graduated from the University of Columbia with a major in Italian, and was teaching English to earn some money before she started graduate school at the university. She often came to *La Bella Hadley* — that was the name of my *trattoria*, given by the first owner many years ago in honor of Ernest Hemingway's first wife. At first, we were what we call in Italian "convenient" friends. She practiced her Italian with me, and I practiced my English with her. Soon, however, we fell in love. She returned to the university for graduate school. As quickly as I could, I sold *La Bella Hadley*, and followed.

RYCHLY: And then?

NITTARDI: And then, in 1988, we married. She continued her studies — it was a long, slow process to earn a doctorate — and I started working in a local Italian restaurant here in

Bradfield. In time, I was made a partner. Not long after, I sold my interest and bought my own restaurant, *IL Pavone*.

RYCHLY: *IL Pavone* has been wildly successful since it opened. I have almost always had to beg to get a reservation.

NITTARDI: A thousand thanks. I have been very lucky.

RYCHLY: Continue.

NITTARDI: The next two years, we hardly saw each other. Jean was always at the university, and I was always at the restaurant. But we saw each other sometimes. In 1991, Silvia was born. What a beautiful baby. What a beautiful little girl.

RYCHLY: What happened next?

NITTARDI: In spite of her studies, Jean was an excellent mother. And, in spite of the restaurant, I tried to be a good father. I guess we forgot to be husband and wife. We, how do you say it, bickered —

RYCHLY: Bickered.

NITTARDI: — bickered, and grew apart, and in 1994, when Silvia was three, we divorced. It was Jean's idea, but I could not disagree. We were not so much angry, we were sad. We did the divorce ourselves, without lawyers; we agreed on practically everything. Silvia was three, as I said, and we agreed that Jean should take care of her most of the time, and that I should help when the restaurant was slow or closed. Jean remained in our house, and I bought a cottage nearby.

RYCHLY: And then?

NITTARDI: We continued on, I with the restaurant and Jean with her studies. It was hard for Jean to progress in her studies because, as I said, we had agreed that she should take care of Silvia most of the time. In 1997, when Silvia was six, we agreed to divide the care, but only for three years, which is what Jean thought that she would need to finish her written and oral comprehensives and to prepare and defend her dissertation.

RYCHLY: So, in 2000, when Silvia was nine, you went back to the original arrangement?

NITTARDI: No, we never did. We continued with the arrangement as modified, dividing the care of Silvia. It took Jean longer to complete her dissertation than she had expected. She finally got her doctorate in 2001. She then had to begin looking for a permanent position. Fortunately — or so it seemed at the time — the Italian department received funding for an additional tenure-track position beginning in 2002. Jean had been the department's best student in years. The department gave her a one-year job as a lecturer as it waited to

appoint her to the new position as an assistant professor. So, with all that was going on in Jean's life, we just continued with Silvia as we had.

RYCHLY: Could you tell me something more about the arrangement? What have you done?

NITTARDI: I have organized my schedule in order to be home with Silvia as much as possible, whenever she is not in school. I help her with her homework, accompany her to her extracurricular activities, that sort of thing.

RYCHLY: What about Jean?

NITTARDI: She has done likewise, fitting her schedule around Silvia.

RYCHLY: What's changed?

NITTARDI: This last year has been good for me, but not so good for Jean. I think that is the source of some of our present difficulties. The restaurant has become even more successful than it was. I am making more money, and have more leisure — not much, but more.

RYCHLY: And Silvia?

NITTARDI: Silvia is now 12. She is in middle school, and gets very good grades. She is keen to begin Bradfield High School next year with all of her friends — she has so many. She has spoken Italian and English since she was a toddler. Because she speaks so well, and is so charming, she has endeared herself to many of my friends in the large Italian expatriate community here and to their children.

RYCHLY: Your friends like her —

NITTARDI: And she likes them too, especially, of course, their children.

RYCHLY: Her activities, what are they?

NITTARDI: She is a member of an Italian-American youth group. She helps the exchange students who come from Italy, and hopes to go to Italy next summer as an exchange student herself. She is also a member of a volleyball team that competes across the country. Because I was not born here, I always travel with her, to learn about America, but especially to look out after her. I love her dearly, and am so happy that we have become so close.

RYCHLY: You travel with Silvia even during periods when she would have been in Jean's care had she been home?

NITTARDI: Yes. Jean does not grudge me the extra time — at least, she did not before now.

RYCHLY: That brings me to my next point: You said that things have not been so good for Jean?

NITTARDI: Yes. The Italian department got an unexpected opportunity to hire a prominent professor from the University of Rome, Yolanda Fata, and did so, awarding her tenure at the same time. It used the position that was supposed to be Jean's. Jean was devastated. It was too late in the year for her to look for a position elsewhere. So she came up with some idea to develop computer software for Italian-English and English-Italian translation.

RYCHLY: I didn't know she's a software developer.

NITTARDI: She's not. She'll have to find one to work with. How she will pay him, I do not know. She has little savings, and needs a job to earn money.

RYCHLY: So the hiring of Professor Fata hit her hard?

NITTARDI: Yes — and the fact that Yolanda and I met, and have become good friends. Very good friends.

RYCHLY: You mean that the two of you have a romantic relationship?

NITTARDI: Yes, and I believe that has caused trouble.

RYCHLY: Why don't you explain?

NITTARDI: Until this year, Jean and I always got along. Not only for Silvia's sake, but also because we have remained fond of each other. Perhaps each of us had some vague hope that we might someday reconcile. After Yolanda, I guess, we do not have any such hope. And so we have started bickering again, just as before the divorce, and, for the first time in all the years I have known her, she has begun to act spitefully. Not only towards me, but also toward Silvia. I know that adolescent girls sometimes have great difficulties with their mothers as they become more independent. My sister did with my mother. Much fireworks. But when it passed, it passed, and the relationship became stronger and deeper than before. But I am troubled by Jean and Silvia. Jean seems to punish Silvia to punish me — me and Yolanda. How else can you explain her sudden plan to move with Silvia to Dakota to develop her software there? The University of Columbia has a great Italian department, and a great computer-science department and engineering school. Dakota is more than a thousand miles away. It's a wonderful state, with much agriculture and livestock. But, as far as I know, it has no Italian expatriate community. I do not even know whether its university has any Italian or computer-science department. And how else can you explain her hiring a lawyer? We had always settled everything ourselves, in a friendly manner.

RYCHLY: Well, Mr. Nittardi, Jean has indeed hired a lawyer, and you have hired me. What would you like to have happen or not to happen?

NITTARDI: I do not want to stop Jean from moving if she wants to (I cannot believe that she really wants to), but I do not want her to take Silvia. I want to continue to care for Silvia and spend time with her before she becomes older and wishes to associate more with her friends and less with her father.

RYCHLY: Have you discussed this with Silvia?

NITTARDI: Yes; she says that she's caught in the middle between us, and she does not want to choose.

RYCHLY: Are you prepared to take care of Silvia full-time?

NITTARDI: Yes, I have thought much about it, I am. I will make whatever adjustments I must.

RYCHLY: Fine. Give me some time to research the issues. But we have to act quickly since Jean's lawyer says she intends to move in about two weeks. One thing is clear; you'll have to go to court.

NITTARDI: That is what I was afraid of.

RYCHLY: It's nothing to be afraid of. It just has to be done. I'll send you an opinion letter within the next few days to help you understand your legal position. Then we'll meet again to discuss matters.

NITTARDI: Fine. Thank you very much. Good-bye.

RYCHLY: Good-bye.

**IN THE SUPERIOR COURT OF THE STATE OF COLUMBIA
COUNTY OF ALSTON**

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IN RE THE MARRIAGE OF JEAN)
DILLON NITTARDI AND PIER NITTARDI.)
_____)
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JEAN DILLON NITTARDI,)
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Petitioner,)
))
v.)
))
PIER NITTARDI,)
))
Respondent.)
_____)

No. 101747

**JUDGMENT OF DISSOLUTION;
STIPULATED CUSTODY ORDER**

IT IS HEREBY ADJUDGED, DECLARED, AND DECREED that the marriage of
Petitioner, Jean Dillon Nittardi, and Respondent, Pier Nittardi, is dissolved.

On stipulation of Petitioner and Respondent, it is hereby ordered as follows with
respect to the custody of Petitioner and Respondent's Child, Silvia Nittardi:

1. Petitioner and Respondent shall share joint legal custody of Child.
2. As for physical custody of Child:
 - a. Petitioner shall be Child's primary caretaker.
 - b. Respondent shall be allowed to visit Child from 2 p.m. to 4 p.m. at
Petitioner's residence on each Monday, Wednesday, and Friday, and
shall be allowed to take Child to Respondent's residence each week
from 2 p.m. on Saturday until 2 p.m. on Sunday.

1 Dated: October 3, 1994

 /s/ Peter J. Belton
Judge of the Superior Court

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1 **IN THE SUPERIOR COURT OF THE STATE OF COLUMBIA**
2 **COUNTY OF ALSTON**
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6 IN RE THE MARRIAGE OF JEAN)
7 DILLON NITTARDI AND PIER NITTARDI.) No. 101747
8 _____))
9)
10 JEAN DILLON NITTARDI,)
11)
12 Petitioner,)
13)
14 v.)
15)
16 PIER NITTARDI,)
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18 Respondent.)
19 _____))
20

21 On stipulation of Petitioner, Jean Dillon Nittardi, and Respondent, Pier Nittardi, it
22 is hereby ordered as follows with respect to the custody of Petitioner and Respondent's
23 Child, Silvia Nittardi, effective from this date until and through June 30, 2000, and
24 suspending the operation of the order herein dated October 3, 1994:

- 25 1. Petitioner and Respondent shall share joint legal custody of Child.
26 2. As for physical custody of Child:
27 a. Petitioner shall be Child's primary caretaker.
28 b. Respondent shall be Child's secondary caretaker, and shall be allowed
29 to visit Child from 2 p.m. to 4 p.m. on each Friday and Saturday, and shall
30 be allowed to take Child to Respondent's residence each week from 8
31 a.m. on Monday until 8 a.m. on Thursday.
32 3. On July 1, 2000, this order shall expire by its own terms, and the order herein
33 dated October 3, 1994, shall automatically become operative.

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Dated: June 26, 1997

 /s/ Lilinda De La Cruz
Judge of the Superior Court

RYCHLY & KELLY, LLP
Attorneys At Law
220 McGEE AVENUE
BRADFIELD, COLUMBIA 09654

MEMORANDUM

TO: Mary Rychly
FROM: Brian Daley
DATE: July 28, 2003
SUBJECT: *In re Marriage of Nittardi*

At your request, I have briefly researched the University of Dakota and the City of College Station, where the university is located. In doing so, I have visited websites maintained by the university and the city, and also websites maintained by other individuals and groups in the area.

The University of Dakota does not have an Italian department. It does, however, offer two Italian language courses each semester through its romance language department. By contrast, the university has a large and thriving computer-science department, which awards more than 100 undergraduate and graduate degrees each year. There is a burgeoning software industry in the area, employing graduates from the university and many others as well.

I understand that the above information is all that you desire at the present time. Should you want more, I will continue my research.

ZACHARY, SIDNEY & ROSE, LLP
Attorneys at Law and Counselors at Law
1710 BLAKE STREET
BRADFIELD, COLUMBIA 09654

July 24, 2003

BY CERTIFIED MAIL

Pier Nittardi
810 Mariposa Street
Bradfield, Columbia 09650

Re: *In re Marriage of Nittardi*, Alston County Superior Court No. 101747

Dear Mr. Nittardi:

We have been retained to represent Jean Dillon Nittardi in the above-referenced matter.

We are writing to inform you that Ms. Nittardi intends to move from the State of Columbia to the State of Dakota on or about August 12, 2003. Inasmuch as she has sole physical custody of her child, Silvia Nittardi, under the decision of the Columbia Supreme Court in *In re Marriage of Burgess* (Colum. Supreme Ct. 1996), she has a right to take Silvia with her when she moves. She intends to exercise her right.

We stand ready at any time to discuss your possible visitation with Silvia once she has taken up residence in Dakota with Ms. Nittardi.

Very truly yours,

Lucien Zachary

LZ:pc