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**THIS EXAMINATION CONSISTS OF 6 PAGES (INCLUDING THIS PAGE)
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**THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW**

**FINAL EXAMINATION
APRIL 2019**

**LAW 377/577
Immigration Law
Professor Asha Kaushal**

TOTAL MARKS: 100

TIME ALLOWED: 3 HOURS

- NOTE:
1. This is an open book examination.
 2. Please answer ALL questions on this exam. The exam consists of THREE (3) questions.
 3. Please refer to the *Immigration & Refugee Protection Act* (“IRPA”), the *Immigration & Refugee Protection Regulations* (“IRPR”), and the case law in your answer. Full citation of cases is not necessary. You may refer to cases in short form.
 4. You are not required to refer to the Comprehensive Ranking System (CRS) in your answers.
 5. All facts and scenarios in this exam are fictional. Some country descriptions are loosely based on real facts but details have been changed. If you need to make assumptions to answer a question, please indicate what those assumptions are and what, if anything, follows from them.
 6. Your grade on this exam will count for 100% of your grade in Immigration Law unless you wrote the Case Comment. If you wrote the Case Comment, then your mark on this exam will count for 70% of the course.
 7. Good luck and have a wonderful summer!

**THIS EXAMINATION CONSISTS OF 3 QUESTIONS. PLEASE ANSWER ALL
QUESTIONS.**

QUESTION 1 (40 marks)

Olivia is a young woman from the port city of Odesa in the Ukraine. She is the only child of a mixed media artist named Joseph and an esthetician named Nicola. Joseph and Nicola moved their daughter to Kiev in 2001, so that Joseph could begin an artist-in-residency program at the country's famous college of art and design. Olivia came of age after the breakup of the Soviet Union, and grew into a political activist. She is a proponent of radical democracy, which sometimes veers close to anarchy and sometimes advocates violence.

In her late teens, Olivia joined an underground group in Kiev called Donetska Republica. For Olivia, the Donetska Republica group represented independence and freedom from Western ideals of liberalism and individualism. She followed those who believed that the former Soviet empire could be something other than the mirror image of the West, and that Donetska Republica was forging that new path. Olivia spent a significant amount of time online, sharing information between members and with networks.

During the Purple Revolution in the Ukraine in 2014, the Donetska Republica group was rumoured to have agitated protesters and provided both financial backing and arms to pro-government, anti-democratic forces. Due to the process of geopolitical metamorphosis still underway in the former Soviet Union, it is very difficult to find information about the aims or methods of Donetska Republica. According to the US Department of State, it is a large, well-funded, amorphous organization set on intervening in elections in the former Soviet republics. It has been accused of assassinations, kidnappings, and intimidation bombings, but none of these accusations have been proven or even prosecuted.

By 2015, Joseph and Nicola had become increasingly worried about Olivia's pastimes. Her teachers told them that she had stopped attending classes months ago. She continued to dress in camouflage and read books about the world's violent revolutions. Lately, she had stopped speaking to her parents entirely and spent most of her time online. Around this time, Joseph was offered a tenure-track professorship at the Ontario College of Art and Design (OCAD) in Toronto. Olivia's parents decided the time was ripe, and they opted to move to Toronto as quickly as possible. Perhaps predictably, Olivia was furious at the move. OCAD took care of all of the paperwork for the family, and, one year later, they were all standing in front their new rental house in Toronto as permanent residents of Canada. A week after they arrived, Olivia celebrated her 21st birthday.

Eventually, Olivia settled into her new life and even started to enjoy her political science classes at Seneca College. She had made a good friend named Cassidy, who had been a key organizer in the Occupy Toronto movement and who seemed very sympathetic to Olivia's political views and experiences. In October 2017, Olivia was listening to her Global Politics professor drone on about the Cold War when two CBSA officers entered the classroom and took her away for questioning.

Over the past year, the methods of Donetska Republica had become even more extreme. They were rumoured to be responsible for setting off bombs in markets near tourist hotels, which had attracted intense international scrutiny. The CBSA had information suggesting Olivia had been active in Donetska Republica while she lived in the Ukraine, promoting its goals and ideology

both online and in meetings, and that she had solicited funds for it. Following a brief interrogation session, the CBSA detained Olivia on the basis of her being unlikely to appear for examination.

Olivia was placed in the Toronto Immigration Holding Centre by Pearson Airport. Her detention was reviewed at the 2-day mark, after which Joseph and Nicola retained an immigration lawyer to help them. Olivia has now been in detention for 61 days. The Immigration Division next reviewed her detention again at the 30-day mark, and the Immigration Division member unequivocally accepted that the Minister was taking the necessary steps to inquire into her inadmissibility. Everyone is confused and distraught. Joseph and Nicola cannot access anyone in the CBSA to speak to about Olivia's situation and their lawyer is increasingly out of his depth. Meanwhile, Olivia is depressed and certain she will be sent back to the Ukraine by herself.

Question 1: What is the basis for Olivia's inadmissibility? Is she inadmissible based on these facts?

Question 2: What recourse does Olivia have against her detention and possible removal, if any?

QUESTION 2 (35 marks)

Xavi is a citizen of Guyana. He was born in Lethem to a devout Protestant family. The day he graduated from high school, Xavi boarded a bus to Guyana's capital and largest city, Georgetown, to start his new life as a gay man. With a pocket full of savings and not much else, he worked cleaning tables in restaurants until he finally convinced the head chef at the famous Hibiscus restaurant to let him do prep work in the kitchen. There, among the chaos and the camaraderie, Xavi found Sachen, a sous chef from the nearby city of New Amsterdam.

Sachen introduced Xavi to the large gay community in Georgetown. Their lives melded quickly and seamlessly. Xavi joined Sachen's cricket team, and they took up calypso club dancing at night. They established a solid group of mostly gay friends and their own relationship grew even stronger. Sachen soon convinced Xavi to move out the room he was renting in a decrepit rooming house and into the same apartment building as him near Stabroek Market. Xavi was only able to afford the studio apartment with Sachen's help, but he promised to pay back every penny with interest.

This is not the whole picture, though. Guyana is the only country in South America where homosexual acts are illegal. It is difficult for LGBTQ people to reveal their sexuality, even to friends and family, because discrimination is such common practice. Physical displays of affection often invite verbal or physical abuse. This is why Sachen and Xavi maintain separate residences in a large apartment building, and it is why they travel in large groups of friends and frequent very specific clubs where they know they will be safe.

Despite their shared happiness, Xavi had come to Georgetown when he was young and he was starting to get restless. Doing prep work at Hibiscus, which was initially fun and glamorous, now seemed like routine work in a dead-end job. Xavi had always been ambitious. One of their mutual friends worked in the burgeoning gaming industry on the outskirts of the city, and he offered Xavi a basic coding position at Oracon, his tech company. Xavi jumped at the opportunity and quickly learned Java code. As it turned out, Xavi was a natural computer programmer. Recognizing his talent, Oracon offered to pay for him to obtain a BSc degree in Computer Science from the University of Guyana in exchange for reduced pay and a commitment to return to Oracon for three years. Xavi seized the opportunity and, upon his return to Oracon, would take the helm of the Android apps division of the company.

Throughout Xavi's university education and return to Oracon, Sachen and Xavi remained together. Sachen had been promoted to executive chef at Hibiscus. In 2018, for the first time in Guyana's history, the LGBTQ community hosted a Pride parade. Xavi and Sachen attended in full party regalia to celebrate the historic milestone. Toward dusk, some of the participants got a bit rowdy and police roughly intervened. Xavi, always impulsive, jumped into the fray to defend his friends and was taken into custody. The police ultimately released him without pressing any charges but they told him he was on a watch list now, and to be careful about his friends and associates.

Sachen, not nearly as impetuous as Xavi, became even more fearful of living openly as a gay couple in Guyana. Xavi, meanwhile, had already been pondering an exit plan. His university education had exposed him to a much larger world, and he knew that he was employable and they could live safely elsewhere. A few months after the Pride parade incident, Xavi mentioned his

plans to Sachen. Sachen was receptive to the idea of emigrating but he was worried about leaving his 12-year old son behind. Before Sachen met Xavi, he was married to a woman named Maria, and they had a son named Diego. Diego lives with his mother and his grandparents in a wealthy suburb of Georgetown. He sees his father every two weeks. Sachen and Diego are quite close, and Diego loves Xavi, who taught him all kinds of secret tricks on his Android phone. Sachen wouldn't have been so hesitant to leave except that Maria had recently told him that she was planning to move to a coastal town to live with her wealthy boyfriend who owned a large beach house there. Sachen knew Diego was unhappy with his mother's decision and wasn't sure what the future held for him.

Xavi is an optimistic soul who believes that they can leave and bring Diego to join them soon after if things with Maria's boyfriend go sideways. Sachen is more measured, and he wants to take some time to sort out their affairs and help Diego adjust to his new living situation before he leaves. They have only the vaguest understanding of immigration requirements. Having heard that Australia and Canada were good places with fast processing, Sachen selected Canada because his sister lives there.

Two weeks ago, Xavi finalized his supporting documents for the Express Entry program. He is applying as a computer programmer under NOC 2174 (Level A). He upgraded his English skills to CLB 7 in all four areas, and even received CLB 8 in reading and writing. Xavi and Sachen were out for lunch with their friends last Saturday, and one of them suggested that Xavi's immigration situation was rather complicated and recommended he speak to an lawyer in Canada.

Question 1: Will Xavi make it into the Express Entry pool? Do not discuss the CRS points system.

Question 2: Assume for the purpose of answering this question that Xavi is invited to apply for permanent residence. Can Sachen join him? What about Diego? How?

QUESTION 3 (25 marks)

Touré is a 23-year old Senegalese national. He comes from a wealthy and connected family in Dakar, and he has been trying to get a study permit at a large North American university for several years. He has a BSc from a top-ranked university in Senegal, but his grades were abysmal. Touré was coddled by his parents and his many nannies, and he has a poor work ethic. Despite his academic shortcomings, he obtained admission to a diploma program in hospitality management at a small Canadian college four years ago, but the visa officer refused his study permit because she did not believe that he would leave at the end of his period of authorized stay.

Finally, last year, Touré received a study permit to participate in a seven-month exchange at Concordia University of Edmonton. The permit placed two conditions on Touré's stay: he had to leave after seven months and he could not change institutions. Upon arrival in Edmonton in August, Touré was greeted by torrential rain. When he got to his room many blocks away from the university, he found only a bed and desk inside and no else in the residence. The next few weeks proved emotionally challenging for Touré, and his advisor ultimately suggested he look into a more familiar program at the University of Alberta. With some help from his parents, Touré secured one bridge term there, which took him just two weeks past the seven-month mark, and he was much happier. Touré returned to Dakar as soon as term was over.

This spring, Touré received the good news that he had been admitted to Kwantlen Polytechnic University, which is a designated learning institution, for the one-year Graduate Diploma in Global Business Management. This time, he carefully prepared a record for his visa application including evidence of property ownership (he had asked his parents to transfer their beach house into his name) and a letter from his part-time employer to the effect that he had important reasons to return to Dakar. Touré did not disclose on his visa application that he had previously held a study permit for Canada. His Kwantlen study permit was granted in April, and Touré left for Vancouver almost immediately.

Touré settled in Richmond and formed quick friendships. He attended his summer classes somewhat sporadically but completed all of his coursework. Two months into his stay, Touré received news that his parents had been bankrupted by the government expropriation of most of their real estate holdings. They told him to return home but Touré resisted this command. He told them that he had grown up a lot and planned to look for job and make this business diploma count. They relented, and Touré handed out job applications the next day. A few days later, he started working full-time at the noodle shop in the local mall and regularly attending classes. It is a busy schedule to maintain but Touré is energized by his newfound self-sufficiency. One month passed, and Touré opened his mail to find a fairness letter advising him that he has breached the terms of his study permit and he had to leave Canada immediately.

Question 1: You are a Federal Court judge and this case has come before you as a judicial review of an officer's decision finding that Touré breached the terms of his study permit. Please write a brief decision that identifies all of the issues and comes to a conclusion about whether Touré may stay in Canada as a student or whether he must leave.