THE UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2020

LAW 377.001
Immigration Law

Professor Asha Kaushal

EXAMSOFT PASSWORD:
EXAMSOFT RESUME CODE:

TOTAL MARKS: 100

WRITING TIME ALLOWED: 3 HOURS
PREPARATION TIME ALLOWED: 10 MINUTES

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EXAM NOTES:

1. The exam consists of FOUR (4) questions.

2. The final question, Question 4, provides a <u>choice</u> of two topics. Please select only ONE (1) topic for your short essay answer.

3. Please refer to the *Immigration & Refugee Protection Act* ("*IRPA*")*,* the *Immigration & Refugee Protection Regulations* ("*IRPR*"), and the relevant case law in your answer. Full citation of cases is not necessary.

4. All facts and scenarios in this exam are fictional. If you need to make assumptions to answer the question, please indicate what those assumptions are and what, if anything, follows from them.

5. 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.

6. Good luck and keep well!

QUESTION 1 (30 marks)

Rose is a 28 year old Chinese citizen. Rose grew up in Yunnan Province with her parents. She moved from her rural home to complete her accounting education, and then settled in Shanghai, where she was hired out of university by a telecommunications company. She met and married Phillip soon after. However, the marriage faltered in less than a year, and Phillip took a job in Hong Kong. They messaged and spoke occasionally after that, but both eventually moved on with their lives and relationships.

A couple of years later, Rose met Raymond through a mutual friend in Shanghai. Raymond was significantly older than Rose. About six months after Rose and Raymond began their relationship, Rose was offered a position with one of the Canadian branches of her telecommunications company, to begin in April 2020. The position was a promotion and it was in Vancouver, BC, a place that Rose had always wanted to live. Raymond was very enthusiastic about the possibility. He had been looking for a way out of Shanghai for years, but hadn't been prepared to make the move alone. He proposed to Rose a couple of weeks later, suggesting that they marry in Shanghai while they both made preparations to leave. Raymond was one of three principals at a well-known architecture firm and he needed much more time to wrap things up and complete his projects than Rose. They planned for Rose to go first, and to sponsor him later.

After the proposal, Rose called Phillip and asked him if he would agree to a divorce. It turned out that Phillip was two weeks away from moving to San Francisco with his new partner to start a position in April 2019. He offered to file the petition for divorce as soon as possible after arriving in San Francisco. In June 2019, Rose and Raymond decided to obtain visitor visas and go to Vancouver to explore their future city and look at their housing options. They were enchanted by

Vancouver and took some small trips to the local islands. While they were staying at a small bed and breakfast in Tofino, Raymond impulsively suggested that they marry right then and there, in Tofino, to cement their relationship in their new home. Rose agreed, and they found an officiant through their bed and breakfast, who married them on the beach. They returned home in mid-July 2019, moving into Raymond's apartment and beginning the process of moving their lives to Canada.

Later that summer, in August, Rose returned to her old apartment to check for mail and found the divorce paperwork from Phillip. She signed everything and returned it to him immediately. Rose arrived in Vancouver a bit earlier than expected, on March 1, 2020, and so far everything is going well. Raymond expects to be finished with his work obligations in less than a year, and Rose's plan is to submit her sponsorship application for him soon. In the meantime, they intend to stay in close contact with video calls and frequent visits.

Question 1   (Recommended time: approximately 55 minutes)

When Rose files her spousal sponsorship application for Raymond, what problems might they encounter? Do you think any of those problems will prevent Raymond from coming as her spouse? If so, do they have any <u>family-based immigration</u> alternatives? Do not discuss other non-family immigration alternatives (such as economic or temporary immigration options)

QUESTION 2 (25 marks)

Jorge is a 25-year old El Salvadorian citizen who lives in San Miguel with his mother. His father was a doctor until he passed away last year. Jorge has always led a relatively privileged life in El Salvador, as the only child of two professionals, but it took him a while to figure out his life's work. He is now a skilled electrician who has worked on some of San Miguel's biggest residential projects.

When he was 19 years old, Jorge became loosely involved with the gang MS-13 through his friend Fernando. It is hard to stay "loosely involved" with MS-13, one of the most violent and brutal gangs in the world, and Jorge fairly quickly realized he needed to get out of their company. Throughout the year or so that Jorge fraternized with MS-13 members, he occasionally accompanied them on their extortive missions but he did not participate in those interactions or in any violent acts. Once, on a dare in 2015, Jorge stole a Ferrari from the wealthy suburbs, took it on a joyride with Fernando, and then gave it to a few MS-13 members to take their own joyrides. They left the car in a nearby neighbourhood in the middle of the night, but not before the owner of the Ferrari had reported the theft to the police.

In January 2016, the judge convicted him of "theft over $100,000", which carries a sentence of up to 5 years imprisonment. This offence does not distinguish between the types of objects stolen, it simply sets threshold amounts at $500, $5000, $50,000, $100,000, $500,000, and $1 million USD, which is El Salvador's official currency. In sentencing Jorge, however, the judge took note that he had no criminal record and that he was otherwise a good citizen. He gave him a conditional sentence of 12 months and cautioned him about his path, advising him to sever ties with MS-13 members immediately.

Jorge understood this sentence as a second chance, and followed the judge's advice. His mother and father had already threatened that if he did not discontinue his relationship with MS-13, they would force him to live elsewhere. It was not hard to sever ties since he had taken on all of the blame for the theft of the Ferrari. It was after this incident that Jorge decided to go learn a skilled trade. He had always enjoyed working with his hands, and becoming an electrician was a natural fit. When his father passed away, Jorge decided to start a new life somewhere else. MS-13 was steadily taking over the country. His mother supported this decision, and she agreed that she would retire soon and join him. Jorge discovered the Federal Skilled Trades program (FST) in Express Entry, and decided to apply.

Last month, he received a fairness letter from an immigration officer telling him he was inadmissible for criminality under s. 36(2)(b). The officer told him that the equivalent offence here was s. 333.1 of the *Criminal Code*, and advised him to hire a lawyer. Section 333.1 appears below:

> 333.1 (1) Everyone who commits theft is, if the property stolen is a motor vehicle, guilty of an offence and liable
> > (a) on proceedings by way of indictment, to imprisonment for a term of not more than 10 years, and to a minimum punishment of imprisonment for a term of six months in the case of a third or subsequent offence under this subsection; or
> > (b) on summary conviction, to imprisonment for a term of not more than two years less a day.

Question 2   (Recommended time: approximately 45 minutes)

Is s. 333.1 equivalent to the El Salvadoran offence of theft over $100,000? If so, can Jorge be rehabilitated and, if so, how?

QUESTION 3 (25 marks)

Lada and Cyrus are Iranian citizens who have been married for five years. Lada is a chemical engineer who works in the petrochemical industry. Cyrus is also a chemical engineer, but he lost his job a few years ago and had been working as a prison guard at Evin Prison in Tehran since 2016. Evin Prison is known for its horrific conditions and practices, including executions and various kinds of torture. Cyrus was not comfortable with these practices, but Lada was pregnant with their first child and he badly needed a job. Their second child followed soon after. Cyrus was increasingly unhappy with his work, and they were both eager to start a new life somewhere else.

During university, Lada spent six months on exchange in Toronto, and she loved it. They heard about Express Entry and they know her skills and work experience are in high demand. Ultimately, Lada's lack of Canadian education or work experience stymied her application, so she began to pursue options to come as a temporary worker. A petrochemical company in Alberta offered her a job, with the option pursue the Canadian Experience Class (CEC) under Express Entry if things worked out. On her visa and work permit application, she listed her two children and Cyrus as her accompanying family members. However, she omitted Cyrus's most recent job as a prison guard, describing him as unemployed since 2016. Lada was invited to apply for permanent residence, and the family arrived in Canada in December 2018.

They immediately settled into their new life in Edmonton. Their children attend a Montessori school and daycare and have taken up karate and piano lessons nearby. Cyrus is employed in a small firm as a process engineer working on mine water treatment and management. They have rented a house and they are enjoying the wide-open spaces around them. Lada volunteers at their children's school, and helps the older Iranian immigrants in their neighbourhood, bringing them warm meals and news about Iran that she receives from her mother. After about a year, Lada's employer offers to help her file an application for permanent residence as a federal skilled worker. She filed all of the paperwork a week ago, and she's waiting for the next biweekly draw.

This morning, a CBSA officer came to their door. She explained that Cyrus was inadmissible under section 35(1)(a), and that Lada was inadmissible, too. They suggested that the family find an immigration lawyer, and told them to expect their fairness letter in the mail. Lada and Cyrus are devastated and very afraid.

Question 3   (Recommended time: approximately 45 minutes)

What might Lada be inadmissible for and why? What is the <u>best</u> option for Lada to pursue in this situation? Please select her strongest option and evaluate her chances of success.

QUESTION 4 (20 marks)

Please select ONE (1) topic and question. DO NOT ANSWER BOTH QUESTIONS.

TOPIC I

Canada recently revised its economic and business immigration programs. With respect to economic immigration, it has rolled out the online Express Entry system and emphasized the Comprehensive Ranking System (CRS) criteria for selection. With respect to business immigration, it has prioritized start-up visa applicants, and eliminated the former investor and entrepreneur categories.

Question 4 – Option I   (Recommended Time: 35 minutes)

If you were redesigning Canada's immigration system, what role would economic and business immigration programs play? What shortcomings with the current system would your model seek to ameliorate and why? Illustrate your answer by reference to at least two specific economic and/or business immigration programs.

OR

TOPIC II

"Crimmigration" is both a trend and a lens on the growing intersections between criminal law and immigration law. When Juliet Stumpf coined this term in 2006, she was worried about several initiatives that have indeed come to pass. Although the examples in the US are more jarring (e.g. family separation at the border), there are still plenty of examples in Canada.

Question 4 – Option II   (Recommended Time: 35 minutes)

Do you think that crimmigration is a helpful framework for thinking about contemporary immigration law in Canada? Which aspects of crimmigration do you find most compelling (if any) and why? Illustrate your answer by reference to at least two examples of crimmigration here.

END OF EXAMINATION

Have a wonderful summer and take good care.