

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

FINAL EXAMINATION - DECEMBER 2020

LAW 377.001  
Immigration Law

Professor Asha Kaushal

**EXAM PASSWORD: 6rcFTj**  
RESUME CODE: ABB250

**TOTAL MARKS: 100**

(8:50 AM PST) **PREPARATION TIME ALLOWED: 10 MINUTES**

(9:00 AM PST) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 3 HOURS**

**8:50-9:00 AM Preparation Time (Exam writing not permitted)** – This time is given to students to download/print your exam questions once the exam has been made available online on Canvas, to read the Exam Password on this exam coversheet, to enter the Exam Password for the exam in Exemplify, and to progress in Exemplify until you see the **STOP SIGN**, where you will **WAIT until 9:00 AM. DO NOT proceed past the STOP SIGN. DO NOT begin typing your exam answers in Exemplify until 9:00 AM!**

**9:00 AM Exam Writing Time** – At 9:00 AM, you may proceed past the **STOP SIGN** in Exemplify and begin typing your exam answers. Students are required to calculate and monitor their own time for writing exams. All exam answer uploads will be monitored to ensure that typing of answers only occurred during the allotted Exam Writing Time.

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This is an open book examination, meaning that you can refer to your notes, your textbook, and the statutory and regulatory framework.

**If you think you have discovered an error or potential error in a question on this exam, please make a realistic assumption, set out that assumption clearly in writing for your professor, and continue answering the question. Do not email your professor or anyone else about this while the exam is in progress.**

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### ACADEMIC INTEGRITY

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Your answer file should be named, and the coversheet of your answers should be titled with:  
Your Exam Code, Course Number, Name of Course, and Instructor Name  
i.e., **9999 LAW 100.001 Law of Exam Taking - Galileo**

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**EXAM NOTES:**

1. This is an open book examination.
2. The exam consists of FOUR (4) questions.
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!

## THIS EXAMINATION CONSISTS OF 4 QUESTIONS.

**QUESTION 1 (35 marks)**

Leta is a nurse practitioner from the small Caribbean island of St Isle. She grew up in St Isle with her parents and sister. Her parents own a mid-size restaurant on the island that serves plate meals to locals and tourists alike. From the age of 14, Leta was itching to see the world beyond her island. She went to university in the Dominican Republic, worked at a major hospital there for two years, and then applied to immigrate to Canada. She now lives and works as a permanent resident in Halifax, where she has built a tight-knit community of friends.

About one year ago, Leta's father was diagnosed with a heart problem and scheduled for surgery in several months' time. Leta returned home to St Isle, taking a leave from her job at one of the local hospitals. She moved back into her old bedroom in her childhood home for six months and began helping to monitor her father and take him to his medical appointments. During the course of these appointments, Leta repeatedly encountered Jaden, who worked in human resources at the St Isle hospital. They were often both in the cafeteria around the lunch hour and soon began eating together. Leta and Jaden began dating.

Their relationship quickly turned serious. Jaden happily took on the roles of chauffeur and chef, spending most evenings cooking for Leta and her mother, and often leaving work during the day to drive Leta and her father to medical appointments. One evening, four months into their relationship, Jaden broached the subject of the future. They agreed that they were committed to each other. Leta explained that she had only been a permanent resident in Canada for two years and that she was intent on staying in Canada for the longer term. Jaden was open to the idea of joining Leta in Canada. He suggested that she move in with him until she had to return to Halifax, but Leta needed to be close to her parents to help them out.

After that evening, Leta and Jaden spoke constantly about him moving to Canada. One week before Leta's flight home, Jaden told her he had something important to share. He had looked into the basic rules of Canadian immigration law, and he was worried about something that happened a long time ago. In his younger life, Jaden used to be a small-scale reggae star. He toured the Caribbean islands a couple of times and even made it to some international destinations. When he was playing at a music festival on the island of Namican, he opened his set with a profanity-laden introduction. He did not know that profanity was illegal in Namican, and, upon completing his set, he was promptly charged and ultimately convicted. He paid a \$500 fine. Upon hearing this story, Leta could not believe that such a minor infraction would stymie Jaden's immigration to Canada, but she promised to ask an immigration lawyer for advice once she was back in Halifax.

The immigration lawyer provided some advice about how Jaden could come to Canada, and also researched his conviction. Under Namican's *Small Charges Act*, it is an offense to use profane words in any public place. The penalties depend on the seriousness of the offence and range from a fine of up to \$5000 to imprisonment up to 3 months. The immigration lawyer advises Leta that he thinks Jaden will be inadmissible because the offense is likely equivalent to section 173(1) of the *Criminal Code*.

**173 (1)** Everyone who wilfully does an indecent act in a public place in the presence of one or more persons, or in any place with intent to insult or offend any person,

- (a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than two years; or
- (b) is guilty of an offence punishable on summary conviction.

Leta thinks this immigration opinion is incorrect. She calls Jaden immediately and they agree to obtain a second opinion. Leta has come to see you.

### **Question 1**

- A. Can Jaden come to Canada as a member of the family class based on his relationship with Leta? If so, under which category would you advise him to apply?
- B. Is the Namican offence equivalent to section 173(1) of the *Criminal Code*? Do not analyse rehabilitation.

### **QUESTION 2 (30 marks)**

Imran is a 32 year old electrical engineer from Bazistan. He grew up in a small village on the outskirts of a coastal town, but longed for life in a big city. As soon as he finished high school, Imran left home to attend the Polytechnic Institute in the capital city of Hida. He graduated with a Bachelor of Applied Science (BASc) degree and began work with a large aerospace firm, where he continues to work. Imran is married to Sara and they have two children.

Imran's older brother immigrated to Canada five years ago. His parents quickly obtained parent and grandparent supervisas and they have been spending most of their time in Toronto, where they rent a condo. Imran and Sara decided to join his brother and parents in Canada. He easily obtained a job offer from Aering, the large Canadian aerospace firm, and he sailed through the first stages of the Express Entry process.

Last month, however, Imran received a fairness letter from the IRCC advising him that he was inadmissible under the *IRPA*. The letter referred to his involvement with the Talhiddin Nek (TN), a pro-democracy movement in Bazistan.

Imran was involved with TN during his student days at the Polytechnic Institute. Imran's political interest was piqued by the advocacy groups and protests he observed in the early days of his undergraduate degree. During his fourth week in Hida, a new friend invited him to attend a Talhiddin Nek (TN) meeting. Imran attended and listened intently to the descriptions of how corruption and bureaucracy were destroying the Bazistani government. Over the first semester, Imran continued to attend the weekly meetings, listening and learning from the speakers, many of whom were well-known academics and political advocates.

At the end of the first semester, Imran's friend pulled him aside and told him that he could not keep passively attending the meetings: he would have to pay fees and start taking on tasks. Imran willingly agreed to do so. He paid the nominal annual fee, which was put toward posterings, pamphlets, and protests. He began helping out at meetings, mostly by staying to clean up. Eventually he took on responsibility for small administrative tasks, such as maintaining the listserv.

Imran continued to attend meetings as well as occasional protests all the way through his BAsC degree. On a larger scale, those years were marked by a shift toward dictatorship, as the government passed executive orders removing presidential term limits from the constitution and enhancing executive authority over the military. Once Imran graduated from school and began work, however, his involvement waned. He stopped attending meetings and paying fees about six months after he graduated.

A few months after Imran ceased his involvement, some of the academic and political leaders were arrested at protests and jailed. A more radical contingent of the organization urged aggressive direct action, beginning a Twitter campaign to free the protestors, bringing in international human rights groups to bear witness, and taking to the streets. It was not long before the Bazistani military was instructed to quash the dissent, and several violent street battles followed. After that, the increasingly radical subwing of TN hived off from the organization and began employing tactics such as bombs in marketplaces and targeted assassinations. At the same time, the original organization faltered without its core leaders, as people became increasingly afraid of the emerging Bazistani police state. After about one year, there was nothing left of the original TN organization and only the radical subwing remained.

### **Question 2**

What is the ground for Imran’s inadmissibility? Is Imran likely be found inadmissible on that ground? Why or why not?

### **QUESTION 3 (20 marks)**

Abeo is a 22 year old Nigerian student attending the University of Lagos law school. He lives with his parents and siblings in the suburbs. By all accounts, Abeo is a superior student, receiving excellent grades. He recently began work as a research assistant for a renowned constitutional law scholar, Dr. Daama Henry. She sees great promise in Abeo and encouraged him to pursue graduate studies in law.

Dr. Henry completed her graduate studies at McGill University, and Abeo is increasingly intrigued by the idea of coming to Canada to study. Abeo, however, is most interested in ultimately obtaining work with the International Civil Liberties Organization (ICLO), which has offices in Geneva, Washington, and Ottawa.

The ICLO is well-known for its human rights work abroad; its human rights reports are frequently cited by governments, courts, and international organizations. Abeo has a good friend who completed her Masters in Law (LLM) degree in Canada, and then went on to obtain a staff lawyer position at ICLO. Abeo speaks several languages fluently, in addition to being a very strong law student, and his friend thinks he has an excellent chance of getting a job with ICLO.

Abeo is hoping that he gets into the University of Ottawa, which is a recognized Designated Learning Institution. After some months spent on graduate school applications, he decides to further research how he can translate his graduate LLM degree into a job. He decides that he should speak to an immigration lawyer to figure out his possible routes to the ICLO. He emails you.

**Question 3**

- A. Do you think Abeo meets all the requirements to receive a study permit? Are there any potential challenges?
- B. Assuming that Abeo successfully completes his LLM degree in Canada, how can he transition to a job in Canada?

**QUESTION 4 (15 marks)**

This has been an unprecedented year for immigration law. The government closed the border to contain the COVID-19 pandemic (although there were exceptions). The Supreme Court of Canada refused leave to appeal *Revell* and *Moretto*, which urged the revisiting of *Chiarelli* and the role of section 7 in immigration law. Alongside these exceptional events, we learned about the more routine matters of economic immigration, family relationships, international students, humanitarianism and compassion, removal, and detention.

Discuss one case that we studied this term in broader immigration law perspective. Relate it to a theoretical framework or a policy prescription that we talked about in class. Why do you think the case matters?

**END OF EXAMINATION**

**Have a wonderful holiday and take good care.**