

**THIS EXAMINATION CONSISTS OF 6 PAGES
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER**

**THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW**

FINAL EXAMINATION – APRIL 2022

**LAW 377.001/577.001
Immigration Law
Professor Asha Kaushal**

TOTAL MARKS: 100

TIME ALLOWED: 3 HOURS

- NOTE:
1. This is an open book examination.
 2. The exam consists of FIVE (5) questions.
 3. Please refer to the *Immigration & Refugee Protection Act (IRPA)*, the *Immigration & Refugee Protection Regulations (IRPR)*, other relevant instruments (e.g. Ministerial Instructions, guidelines, public policies), 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 5 QUESTIONS.

QUESTION 1 (20 marks)

Rita is a 26 year old Brazilian national. Her sister, Adriana, is 10 years older than her and moved to Canada for graduate studies in public health and administration when Rita was still a teenager. Adriana met Thomas while they were attending Waterloo University together. They are getting married in the fall and Rita is the maid of honour. She wants to apply for a temporary resident visa to attend the wedding.

Rita is concerned that she might be inadmissible to Canada. She was convicted of shoplifting in April 2017 and sentenced to a one year conditional sentence, community service, and several hours of counselling. Rita was in a large electronics store with her high school friends and she slipped some small Apple devices into her handbag. They included an iPhone, AirPods, and a small iPad. She had shoplifted some smaller things in the past, but she was never caught. Rita has no other convictions.

Brazil has a standalone offence for shoplifting, which requires intent to unlawfully take or remove property from a place of business. The offence contains gradations based on monetary value: \$500, \$2000, and \$10,000. The total value of the goods that Rita shoplifted placed her in the \$2000 category.

The closest offence to shoplifting in the *Criminal Code* is:

Theft

322 (1) Every one commits theft who fraudulently and without colour of right takes, or fraudulently and without colour of right converts to his use or to the use of another person, anything, whether animate or inanimate, with intent

- (a) to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property or interest in it;
- (b) to pledge it or deposit it as security;
- (c) to part with it under a condition with respect to its return that the person who parts with it may be unable to perform; or
- (d) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time it was taken or converted.

Punishment for theft

334 Except where otherwise provided by law, every one who commits theft

- (a) if the property stolen is a testamentary instrument or the value of what is stolen is more than \$5,000, is guilty of
 - (i) an indictable offence and liable to imprisonment for a term of not more than 10 years, or
 - (ii) an offence punishable on summary conviction; or
- (b) if the value of what is stolen is not more than \$5,000, is guilty
 - (i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or
 - (ii) of an offence punishable on summary conviction.

Question 1: Is Rita inadmissible and, if so, on what ground? If yes, can Rita be rehabilitated in time for Adriana's wedding?

QUESTION 2 (20 marks)

Amar has been in Canada since he was 11 years old. His father arrived as a refugee from Somalia, obtained employment, and applied to sponsor his family, which included Amar's mother and his three siblings. Soon after their arrival in Canada, Amar's mother became ill and she passed away later that year. Amar never recovered from the loss and his troubled adolescence included several brushes with the law.

Ten years ago, Amar became more seriously involved in criminal activity. He was a mid-range player in a large drug trafficking operation. After about a year, the police managed to intercept the shipments and caught some of the traffickers. Amar was charged and convicted with serious crimes. As the end of his long term of imprisonment neared, CBSA officers coordinated with correctional services to transfer Amar directly from jail to immigration detention in order to remove him.

Despite the many years that the CBSA had to obtain travel documents and permissions from Somalia, they still had not done so by the time Amar was transferred into their custody. The civil war in Somalia was one factor; the long passage of time and Somalia's reluctance to accept Amar back were others. Amar has now been in immigration detention for 14 months. He is struggling. At least with the conviction for drug trafficking, the sentence was finite and he had friends in jail. In immigration detention, he has few friends and he has no idea when and where he will be released.

Almost one year ago, Amar briefly met a detainee named Leon who had retained a good immigration lawyer. Leon offered to let Amar consult with his lawyer. Upon reviewing the case, the lawyer immediately suggested that Amar file a Humanitarian and Compassionate (H&C) application. Amar had graduated from high school in Scarborough, Ontario so he was quite capable of filling out the forms himself. The lawyer reviewed the application and they sent it in. Three months ago, Amar's H&C application was rejected. Amar hasn't seen the lawyer since, and he is feeling despondent. There are no signs that removal is on the horizon.

Question 2: You are an articling student with a new immigration legal clinic who has been sent to consult with immigration detainees. What do you tell Amar about his options?

QUESTION 3 (25 marks)

Simran Singh grew up on a large estate on the outskirts of Delhi. The son of two famous parents with careers in the film industry, he wanted for nothing except their attention. As a teenager, Simran attended boarding school abroad, and then returned to start computer science at the Indian Institute of Technology (ITT) in Delhi. Much to his parent's chagrin, he was generally uninterested in higher education and found himself easily distracted.

During Simran's third month at ITT, one of his friends introduced him to a woman named Preeti. She was a few years older than him, had recently returned from design school in New York, and now ran her own fashion business. Simran was very taken with Preeti, and after some months passed, they decided to get married. Their marriage was a large and joyous event in keeping with the wishes of Simran's parents.

Their marriage quickly began to falter. It soon became apparent that Simran had no direction or ambition. He failed several courses at ITT. His parents offered him financial entrepreneurial backing, but he couldn't settle on a business plan. Meanwhile, Preeti's keen business acumen and talent meant her fashion label was flourishing. She was working around the clock, leaving Simran restless and resentful of her success.

On a whim, he decided to join two of his friends on a trip to Toronto, where they were meeting some hoteliers who were interested in using their linens. Through his friends, Simran met a woman named Nita. She had been in Canada for three years; she came with her parents as their dependent child. She lives, together with her father's extended family, in the suburbs, and she is in nursing school. Simran stays as long as he can, but eventually he must return to Delhi.

Upon return, he stayed in touch with Nita over social media. His marriage to Preeti disintegrated and they separated a few months after his return. She moved into her own flat, and Simran moved back into his parent's house. A year went by. Simran was listless. His two friends secured the deal to supply organic hotel linens to several large Canadian establishments and they needed someone on the ground in Toronto to act as the middle person. They asked Simran and he jumped at the chance.

He excitedly tells Nita about the possibility and she is delighted by the prospect of Simran being in Canada. One thing leads to another and soon they and their parents are talking about marriage. They decide the best thing to do, since Simran had been married before and time was of the essence, was to host a small destination wedding in a tropical locale such as Goa. A very wealthy film producer then offered his private island to them for the ceremony, as a favour to Simran's parents. Invitations were sent, wedding outfits were purchased, travel plans were made.

The wedding took place over five days. After the wedding, Nita returned to Toronto to continue school and Simran returned to Delhi to wait for his permanent residence interview. Last week, one of his friends with the linen business called him to find out what was taking so long. When Simran explained the holding pattern he was in, his friend groaned and told Simran to call an immigration lawyer.

Question 3: What problems, if any, might Simran face in his quest to immigrate to Canada and join Nita?

QUESTION 4 (20 marks)

James and Letisha have two small children aged 3 and 1. They live in Hamilton, Ontario because Letisha is doing her pediatrics residency there. James is an information technology consultant who works remotely for several big tech companies. Their children were born during Letisha's residency. Between her long hours training to be a medical doctor and his long hours dealing in different time zones, life is very busy.

Letisha wants to bring her mother from Trinidad to help them. Her mother, Peggy, has been alone there since her father left them twenty years ago, and she would be delighted to come care for her grandchildren. James, however, wants to bring his mother and father from Scotland.

James's mum and dad are not keen to leave Scotland behind forever, although James thinks they could be convinced. He is their only child and they love spending time with their grandchildren and want to help.

James and Letisha disagree on who should come for logistical as well as personal reasons. For one thing, they aren't sure whether the grandparent(s) would live with them or not. In their discussions, Letisha emphasizes that her mother is alone and far away. James is sympathetic to that, and he knows Letisha's mother is younger and healthier than his own parents.

But James is worried about his mother's recent diabetes diagnosis, which compounds her longstanding autoimmune condition of lupus. James's parents live in a rural part of Scotland and it is increasingly clear that his mother needs extra help that his father cannot provide. James's father has confirmed that a home caregiver will be required soon, but such helpers are not readily available in the rural parts of Scotland. James knows that they could find someone to help his mum in Hamilton, and Letisha would be able to provide advice and care as well.

You are an immigration lawyer and James and Letisha come to see you to help them resolve their impasse. They are each worried about their parent(s), they desperately need help with their children, and neither is sure what to do next.

Question 4: Which parent(s) should come through which immigration pathways? What hurdles, if any, might they face?

QUESTION 5 (15 marks)

Immigration law has varied and complex relationships with other fields of law. It borrows from the *Criminal Code* and other statutes for its inadmissibility grounds, it copies criminal detention in several respects, it employs family law concepts for entry and admission, it is a key component of the modern administrative state, and it regularly encounters constitutional and *Charter* rights claims.

Question 5: Draw on at least two cases we discussed in class to analyse the relationship between immigration law and one other field of law.

END OF EXAMINATION

Have a wonderful summer and take good care.