THIS EXAMINATION CONSISTS OF 7 PAGES

PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA

PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – DECEMBER 2022

LAW 377/577

Immigration Law

Section 1

Professor Asha Kaushal

**TOTAL MARKS:** 100

**TIME ALLOWED:** 3 HOURS

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**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 (30 marks)**

On October 16, 2017, Dalbir Dhillon and his business partner, Taj Tuli, attended a dinner party at Sujjan Singh’s house in Chandigarh, India. The catered reception began in the early evening. There were over two dozen guests at the party. Most of them were involved in small group conversations over drinks before the sit-down dinner commenced.

Over the course of those early evening hours, Tuli got into a heated argument with another guest, Charanjeet Chopra. Later, several of the guests said that the two men appeared to be fighting about a business deal. Dhillon was not part of their argument, and was speaking to other guests during their disagreement.

The host called the police because of the disruption caused by Tuli and Chopra, but ultimately the argument resolved before the police had to intervene to stop it. The reception went on until the early morning hours.

Around 3:00 a.m., Dhillon left the reception alone. He was followed momentarily by his business partner, Tuli, who was then followed by Chopra. Dhillon noticed a suspicious looking vehicle parked on the opposite side of the road. Once Tuli joined him in the street, four men armed with baseball bats and iron bars got out of the vehicle parked opposite and started running toward Dhillon and Tuli.

Dhillon and Tuli got into Dhillon’s vehicle and locked the doors. The armed men pulled on the handles and pounded the car with their bats and bars. Dhillon started his engine and drove away. The events on the street happened very quickly, in a matter of seconds. Dhillon’s recollection of them is spotty.

Later that morning, Dhillon’s cousin told him that Chopra was severely injured and in hospital. The television news reported that the police suspected Dhillon and Tuli of being the main culprits in the attempted murder of Chopra. Two days later, Chopra died.

The Chandigarh police report stated that Dhillon hit and drove over Chopra with his car intentionally and repeatedly three times. The police report further stated that Dhillon was provoked to do so by Tuli.

A day after Chopra’s death, with allegations of attempted murder swirling in the air, Dhillon decided to go into hiding. He was concerned about false imprisonment. Dhillon believed the Chandigarh police to be politically motivated and corrupt. After two months in hiding at his grandfather’s nearby house, Dhillon decided to leave India altogether.

While Dhillon was in hiding, Tuli was charged under ss. 302 of the *Indian Penal Code*. Section 302 states:

Whoever kills any person, shall be punished with death or with imprisonment for life, as well as with a fine.

Section 300 of the *Indian Penal Code* further explains:

**300. Murder** - An act is murder if the act by which the death is caused is done with the intention of causing death, or

If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be in­flicted is sufficient in the ordinary course of nature to cause death, or

If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Two years later, after his trial in India, Tuli was sentenced to life imprisonment.

Meanwhile, Dhillon arrived in Canada, where CBSA officers promptly questioned him about the Chandigarh police report. The border officer was concerned that Dhillon was inadmissible because of section 320.13 of the *Criminal Code*, which refers to driving in a dangerous manner causing bodily harm or death. The *Criminal Code* provisions are reproduced below:

**Dangerous operation**

**320.13** **(1)** Everyone commits an offence who operates a conveyance in a manner that, having regard to all of the circumstances, is dangerous to the public.

**Operation causing bodily harm**

**(2)** Everyone commits an offence who operates a conveyance in a manner that, having regard to all of the circumstances, is dangerous to the public and, as a result, causes bodily harm to another person.

**Operation causing death**

**(3)** Everyone commits an offence who operates a conveyance in a manner that, having regard to all of the circumstances, is dangerous to the public and, as a result, causes the death of another person.

**Punishment — dangerous operation and other offences**

**320.19 (5)** Every person who commits an offence under subsection 320.13(1) or 320.16(1), section 320.17 or subsection 320.18(1) is guilty of

**(a)** an indictable offence and liable to imprisonment for a term of not more than 10 years; or

**(b)** an offence punishable on summary conviction.

**Question 1: Is Dhillon inadmissible to Canada and, if so, on what ground? If yes, can Dhillon be rehabilitated?**

**QUESTION 2 (20 marks)**

Ayla Apple is a five year old citizen of Saint Vincent and the Grenadines, an island state in the Caribbean. Her biological mother is Poppy Pope, who had Apple when she was young. Pope had a turbulent adolescence and was starting to find some stability and direction when she discovered she was pregnant with Apple. Pope’s own parents (Apple’s grandparents) passed away recently in a tragic car crash. Apple’s father left Pope soon after hearing about Apple, leaving Pope to raise her daughter by herself.

Apple is a joyful and easy child, but Pope was still struggling. She had no education or family resources. Apple’s father did not provide any support. They lived in substandard conditions and Pope could not see a brighter future for Apple.

Yolanda Yoodle is Pope’s cousin and Apple’s aunt. She is a Canadian citizen. She grew up in Saint Vincent surrounded by many cousins, aunts, and uncles. Yoodle eventually moved to Canada for her medical residency in oncology and now lives in Edmonton. She works as a specialist doctor in the hospital. Yoodle has a spouse, John Jameson, who owns and runs a local bookstore.

In 2018, Yoodle visited Saint Vincent to see her extended family. She met Pope and Apple, who was only a baby at that time. At that point, Pope was already raising Apple by herself and it was immediately apparent to Yoodle that they were having difficulties. Yoodle felt instantly connected to Apple and grew very fond of her over the course of her visit. She wanted to help.

Yoodle and Pope spoke extensively about various options and it was decided that Yoodle would adopt Apple. Upon her return to Edmonton, Yoodle and Jameson researched the adoption process.

Yoodle initiated that process shortly after, submitting character references and medical reports. She was the subject of a detailed home study conducted by an Alberta child welfare agency which found her home to be appropriate for the reception of an adopted child. The home study was positive.

All of these documents were submitted to the authorities in Saint Vincent and the Grenadines. Pope provided her written consent to the adoption. In 2019, the High Court of Justice in Saint Vincent granted the adoption of Apple to Yoodle by court order.

Yoodle then began the process of sponsoring Apple as her adopted child. She prepared her room and enrolled her in the local school. She added her to their provincial health plan and set her up with their family doctor. Yoodle and Jameson could hardly wait for Apple to arrive.

Last week, she received a letter from Citizenship, Immigration, and Refugees Canada (IRCC) refusing the sponsorship. The visa officer was not satisfied that it was in Apple’s best interests to immigrate to Canada to live with her adopted mother, Yoodle. The officer expressed criticism of Yoodle’s history with Apple, specifically her lack of a developed relationship with the child over time, and seemed generally suspicious of their parent-child relationship.

Yoodle and Jameson are devastated. They thought the adoption conformed to all of the legal requirements and expected Apple to be here already. They have come to you for advice.

**Question 2: Can Yoodle and Jameson sponsor Apple as their adopted child? Using the immigration provisions and cases as your guide, what legal arguments would you make to challenge the visa officer’s findings?**

**Please do not discuss procedural fairness or the process of judicial review.**

**QUESTION 3 (20 marks)**

Charlie Chan is a citizen of China. He lives in Shanghai where he works as an electrical engineer at the Tesla office. He grew up in a rural village outside of the city. Upon his early completion of high school, Chan received an offer to study engineering at Shanghai Jiao Tong University. His intellect and drive continued to serve him well, and Chan graduated with a Bachelor of Engineering (BEng) in four years at the top of his class. His professors told him that a Masters level degree would be easy for him to complete quickly, so Chan stayed on to study for one more year in order to receive a Masters degree in Engineering (MEng).

Tesla recruited Chan to work for them right out of his MEng degree, and he happily accepted their offer. Chan is a studious and industrious person who leads a quiet life. His quick transition to a professional position at the Tesla office in busy Shanghai overwhelmed him at times, and he enjoyed retreating to his tiny apartment to play video games. Chan also frequently returned to his village on weekends to see his family.

After three years working as an engineer at Tesla, Chan met Sara Su through mutual friends. Su had followed a similar trajectory, migrating from the countryside to Shanghai for university and staying on in the city. Su works in the tourism and leisure industry. She speaks excellent English and often jokes that she only works in tourism to finance her writing career. She is working on an English language fiction novel on the side.

Chan and Su were both lonely and happy to discover each other’s companionship. It did not take long for them to decide to get married, and one year later, in July 2022, they wed in a small ceremony in Chan’s village. Chan was 25 years old, and Su was two years older.

On their honeymoon, Chan and Su travelled to the United States and Canada. They started their trip in New York City and ended in Vancouver. While in Vancouver, they stayed with Su’s old friend colleague, Dan Deng, who had moved to Vancouver five years ago. He lived in a new condo building downtown and took them out for meals all around the city and its environs. They hiked, traveled to the Gulf Islands, visited the Tesla store, and ate sushi.

Chan and Su returned to Shanghai that fall but their love for Vancouver grew and grew. Su asked her friend Deng about immigration possibilities. He recommended a local immigration lawyer who could help them.

Chan and Su have come to you for legal advice. Chan wants to know which economic immigration pathway he should pursue and whether he is likely to be selected.

**Question 3: What is your advice to Chan about his best economic immigration option and his likelihood of being selected?**

**QUESTION 4 (15 marks)**

Obi Obawa is 22 year old citizen of Nigeria. He is currently studying at Columbia College in Vancouver, British Columbia. Columbia College is a Designated Learning Institution (DLI). Obawa is studying for an Associate Degree in Business Administration, which is a 2 year program.

Obawa is from a wealthy family in Nigeria that runs an international distribution business. He attended the American International School of Lagos and was expected to attend a top university in the United States or the United Kingdom. Obawa, however, is not scholarly-minded and kept getting into trouble during high school. He often skipped classes and barely passed some of the university qualifying courses. Despite his weak record and lack of interest, Obawa’s parents wanted him to go abroad for further schooling and helped him apply for a study permit in Canada.

Since arriving in Canada and beginning his studies at Columbia College, Obawa has filled his time with new friends, weekend trips, and lots of parties. He is not at all interested in business administration and has fallen behind in his courses. Last term, he failed one of them and performed poorly in the others. The academic counsellor suggested that Obawa reduce his courseload, and he happily obliged.

With his lighter courseload, Obawa started going to the gym each morning and soon decided that he would like to focus on personal training and nutrition. Obawa now wants to be a personal training specialist and he has found an online program that will provide that certification. He has already started training a couple of his friends for extra pocket money. He dropped out of Columbia College two weeks ago and immediately started work on his personal training certification.

This morning, his mom called to remind him that he had to renew his study permit.

**Question 4: Is Obawa’s study permit likely to be renewed? Why or why not?**

**QUESTION 5 (15 marks)**

*The most fundamental principle in immigration law is that non-citizens do not have an unqualified right ot enter or remain in the country*.

This is a quote from *Canada (Minister of Employment & Immigration) v Chiarelli,* [1992] 1 SCR 711. This decision encapsulates the fundamental difference between citizens and non-citizens in Canada, which continues to act as a powerful interpretative principle for officers, Minister’s delegates, tribunals, and courts.

**Question 5: Do you agree or disagree with this quote? Drawing on at least two of the authors, concepts, or cases that we discussed in class, please tell me why or why not.**

**END OF EXAMINATION**

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