This test consists of five (5) Pages. Please ensure that you have a complete paper.

Reading Time for All Students: 15 Minutes

Students completing a 1 hour exam will have 1 hour + Reading Time.

Students completing a 2 hour exam will have 2 hours + Reading Time.

Students completing a 3 hour exam will have 3 hours + Reading Time.

Instructions for students:

1. This is an open book exam. Students may consult any written material or texts that they choose during the exam.

2. Graduate students receiving 500-level credit for this course must complete 3 questions on this exam. At least 2 of these questions must be in Part B.

3. Any JD or 300-level student who did not complete the Case Comment assignment must answer one question from Part A of the exam.

4. Any JD or 300 level student who completed the Case Comment assignment cannot be awarded any marks in Part A of the exam.

5. No student should answer more than ONE question in Part A.

6. Students who have already completed TWO assessments (Case Comment and Mini Moot) must answer ONE question on this exam. This question will be in Part B.

7. Students who have already completed ONE assessment (Case Comment or Mini Moot) must answer TWO questions on this exam.

8. Students writing this exam for 100% of their final grade in the course must complete ONE question from Part A and TWO questions from Part B.

All students are responsible for knowing which portions of the exam they must complete.
Part A – Essay Questions (2 questions – do no more than 1)

*JD students, and graduate students getting 300-level credit, who completed a ‘Case Comment’ are not permitted to answer an essay question.*

1. How might the ‘open borders debate’ inform our understanding of contemporary Canadian immigration law? Answer by drawing on specific examples.

OR

2. Explain both ‘crimmigration’ and ‘the deportation turn’. How are these ideas elaborated by scholars and in what ways are they reflected in recent changes in Canadian immigration law. Please answer as specifically as possible.
Part B – Problem Questions

3 questions – JD students and 300 level credit grad students to do no more than 2. A grad student getting 500 level credit may answer all 3 questions if they choose.

1. Fred came to Canada in 2010 as a temporary foreign worker. He had trained as an electrician in his native Brazil and his skills were in high demand in Alberta at that time. Fred became a permanent resident in 2012 by applying under the Federal Skilled Trades program, likely succeeding on the basis of his pre-arranged employment.

When Fred first arrived in Canada he sent almost half of every paycheque home to his family in Brazil. His parents are looking after his daughter who is now ten years old. Like Fred, his wife, from whom Fred has been separated since coming to Canada, is working overseas.

In November 2013 Fred lost his job after he was caught stealing from the petty cash. His boss did not alert the police to Fred’s behaviour as he felt that losing a job and losing the prospect of any further references was sufficient punishment.

Fred’s unemployment led to a downward spiral in his personal life. His Canadian girlfriend, Lisa, moved out six months after he lost his job. They had been living together for almost two years and they have a son who is now a year old. Baby Sam was born in Edmonton. Sam has been deaf from birth. Fred misses Sam and Lisa terribly, and spends time with Sam every Saturday. Fred is very much hoping to reconcile with Lisa.

Fred developed a fentanyl addiction while working in Canada. The cost of the drug meant that he was increasingly motivated by opportunistic theft. Early in 2014 he robbed a convenience store of more than $5000 by pretending to have a gun. Because Fred had a good lawyer, he pled to a reduced ‘theft ’ charge, where the maximum sentence was ten years in jail. He was sentenced to five months in jail.

Fred has now served almost his entire sentence. His file has been referred to you because you are an immigration officer.

What is your role at this point and what discretion do you have? What recommendations will you make and why? What options are open to Fred at this point? Assuming that Lisa pays for an excellent immigration lawyer for him, what do you expect Fred’s course of action to be? As you advise the government’s lawyer on Fred’s case at each of the upcoming tribunal and court appearances, what arguments will you suggest be made, based on your knowledge of the file?
2. Evaline is a Belgian national who came to Canada as a live-in caregiver in 2009. She worked as a nanny for four years. Evaline became a permanent resident in 2012.

Evaline really did not get along with the family she worked for. The relationship was so strained that at one point her employer reported to the police that Evaline had assaulted one of the children she was caring for. Evaline was convicted of assault and sentenced to community service. She was formally pardoned for this offence after persuading the authorities that the evidence given by her employer about the events in question was not true.

Since becoming a permanent resident, Evaline has worked as a cashier at a major drug store chain. She lives in a basement suite in Kitsilano. She earns approximately $35,000 per year. Erica, her girlfriend, is an American citizen studying at SFU on a study permit. Erica lives on the SFU campus.

Evaline is an only child and she has always been very close to her parents. Last year, her parents were killed in a horrific car crash. Evaline was devastated. At the time of the accident, Evaline had not seen her parents for more than a year. She has been struggling with this loss ever since. Evaline’s mother was also an only child, but her father had three sisters. Evaline adores her aunts. They are her only remaining family members anywhere in the world.

The youngest of Evaline’s aunts is 32, just a few years older than Evaline herself. Marjorie contacted Evaline last week and asked if Evaline would help Marjorie immigrate to Canada.

Evaline is thrilled at the prospect of having Marjorie come to Canada. Like Evaline, Marjorie trained as a nanny after completing high school. She completed a one year certificate program in childcare. Marjorie has worked as a nanny and a nurse’s assistant for more than a decade. Last year, Marjorie divorced her husband of 8 years. Majorie has no children.

Evaline has come to your office to ask you what options are available for Marjorie. When you ask Evaline about possible inadmissibility issues, she tells you that as a teenager, Marjorie was convicted of several shoplifting offences. In all cases, the items stolen were worth less than $100, so the charges would be similar to ‘theft under’ in the Canadian Criminal Code, which is punishable by up to two years in prison (s.334).

What are the options available for Marjorie to come to Canada on a permanent or a temporary basis? What hurdles present themselves in each case? Which option would you recommend to Evaline and Marjorie and why?
3. Joric originally came to Canada from Iceland as a Ph.D. student in 2005. After graduating from UBC with a Ph.D. in geology in 2009, he took a job with the major Canadian mining company BIG GOLD. Joric applied for permanent resident status in the Ph.D. stream and was accepted as a permanent resident in 2011.

Joric has been continuously employed by BIG GOLD since 2009. He has earned a fortune and has an impressive stock portfolio. He loves his work because it allows him to travel the world. Since 2012 he has worked primarily in Peru and in Australia. While living in Australia, he fell in love with Angela.

Angela is an Australian citizen. She studied briefly at the University of Saskatchewan in 2010, but was required to leave Canada because she was convicted of street racing under s. 249.4 of the Criminal Code in January 2011. Although this is a hybrid offence, in Angela’s case the Crown elected to proceed summarily. She was sentenced to a $1000 fine and issued a deportation order. Angela has type 1 (childhood onset) diabetes. In 2012 she returned briefly to Canada for a visit, using her twin sister’s passport.

Joric and Angela have been living together over the past eight months. Things are going well for the two of them, but they would like to move away from Australia because Angela’s father is a notorious mob boss in Sydney and he is putting pressure on his daughter to join the family’s criminal business. So far, Angela has resisted this pressure.

Joric is a bit worried about his return to Canada because while working in Peru in 2010 he was arrested and charged with ‘public hooliganism’. The basis of this arrest was Joric’s participation in a peaceful protest against multinational activities in the mining sector. Joric had infiltrated a local NGO as part of his BIG GOLD work, and was swept up in the general arrest. The charges were never brought to trial. The protest involved standing by the side of a main road in Lima and holding up signs saying ‘Canadians Go Home’.

Joric and Angela would like to return to Canada, get married, and live in Vancouver. Joric has telephoned you in your Vancouver immigration law office. He is seeking advice about how to realize this dream. What will you tell him? What will you ask him?