

INSTITUTE OF LEGAL EXECUTIVES

UNIT 8 – IMMIGRATION LAW*

Time allowed: 3 hours plus 15 minutes reading time

Instructions to Candidates

- You have **FIFTEEN** minutes to read through this question paper before the start of the examination.
- **It is strongly recommended that you use the reading time to read the question paper fully.** However, you may make notes on the question paper or in your answer booklet during this time, if you wish.
- **All questions carry 25 marks. Answer FOUR only of the following EIGHT questions. The question paper is divided into TWO sections. You MUST answer at least ONE question from Section A and at least ONE question from Section B.**
- Write in full sentences – a yes or no answer will earn no marks.
- **Candidates may use in the examination their own unmarked copy of the designated statute book: Immigration Law Handbook, 7th edition, Phelan and Gillespie, Oxford University Press 2011.**
- Candidates must comply with the ILEX Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

Information for Candidates

- The mark allocation for each question and part question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ball point pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

Do not turn over this page until instructed by the Invigilator.

* This unit is a component of the following ILEX qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL PRACTICE**

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SECTION A
(Answer at least one question from this section)

1. (a) Compare and contrast the terms 'right of abode' and 'settlement'.

(8 marks)

- (b) To what extent does the **Race Relations Act 1976** apply to immigration decisions?

(8 marks)

- (c) What are the main differences in the requirements and restrictions of Tier 5 (Youth Mobility Scheme) and Tier 5 (Temporary Worker Scheme) of the points-based system?

(9 marks)

(Total: 25 marks)

2. Compare and contrast the position of EEA and non-EEA citizens and their families seeking to establish a business or trade in the UK.

(25 marks)

3. (a) Explain and critically examine the significance of the concept of 'internal flight alternative' in determining whether an individual should be granted refugee status.

(12 marks)

- (b) Discuss the legal framework used by immigration decision makers to establish the credibility of an asylum claimant.

(13 marks)

(Total: 25 marks)

4. Critically discuss the criminal sanctions available against those concerned with facilitating illegal entry into the UK and those who have entered illegally. To what extent can the Human Rights Act 1998 be used to defend a prosecution?

(25 marks)

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SECTION B
(Answer at least one question from this section)

Question 1

Asad, Dalmar and Nadifa, who are of Somalian origin, have arrived in the UK and are being interviewed by immigration officials at Heathrow airport. Asad and Dalmar are Somalian citizens and Nadifa is a Greek citizen. Asad does not have leave to enter but has asked the Immigration Officer to grant him leave. Dalmar has been granted leave to enter prior to arrival but the Immigration Officer believes that the documents provided by Dalmar may not be authentic. Nadifa lived in the UK for a short period of time but was removed when the immigration authorities became aware of her activities with an organisation in Greece advocating the violent overthrow of the Greek government. The order for her removal has not been revoked.

During the interviews it has become apparent that Asad has recently been in prison in South Africa for drug related offences and is himself an addict. Dalmar is 16 years of age and has no relatives in the UK. Nadifa is still considered to be a security risk.

Critically examine and explain whether the Immigration Officer has powers of detention in these cases and assess the likelihood of those concerned being granted bail if they are detained.

(25 marks)

Question 2

- (a) In November 2010 Janine was given leave to enter the UK in order to rejoin her husband Masood, who had indefinite leave to remain in the UK, and with whom she had previously lived abroad for two years. On coming to the UK Janine set up house with Masood. Over the next few months the police visited their house on a number of occasions following complaints from neighbours of raised voices and arguments. After the latest incident Masood was arrested and cautioned for assault on Janine. Janine applied for a non-molestation order in the County Court but rather than grant an interim order the court adjourned the case to hear Masood. Masood has left the house and is working in another part of the country.

Janine has now applied to the UK Border Agency on form SET(DV) for indefinite leave to remain on the basis that the relationship was at an end because of the violent incidents in which Masood was involved.

Masood has said that he will contest the granting of a non-molestation order on the grounds that the alleged assault took place in self-defence in a heated argument with Janine who was trying to prevent him going to work in another part of the country. He also says he left the house to take up a temporary job, as this was the only work he could get. He wants to continue living with Janine.

Discuss the factors that the UK Border Agency will take into account when considering Janine's application for indefinite leave to remain in the UK and the likelihood of her application being accepted.

(12 marks)

- (b) Bradley was born in Jamaica (which gained independence from the UK in 1962) in 1947 and came to the UK with his parents and his sister in 1966. His father was registered as a UK citizen in 1978. Bradley is a qualified accountant and since 1984 has had several tours of duty in Hong Kong. He is married to Tara who comes from Hong Kong.

Lilli, Bradley's sister, was born in Jamaica in 1949. She left the UK in 1973 and prior to her departure registered as a citizen of the United Kingdom and Colonies. She had two children with a Canadian citizen from whom she is now separated. Marlon, her son, was born in Canada in 1974 and Clare, her daughter, was born in the UK in 1982. In 1980 Lilli returned to live in the UK.

Tara, Bradley's wife, was born in Hong Kong and came to the UK in 1977 where she met her husband. She settled here in the UK and was married in 1984.

Advise Bradley, Lilli, Marlon, Clare, and Tara on their immigration status. Identify any documents that you consider should be available to assist with giving advice.

(13 marks)

(Total: 25 marks)

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Question 3

- (a) Izabel, who is a Brazilian citizen, arrived in the UK from Brazil in 2018. On arrival in the UK she immediately applied for asylum, on the basis of a fear of persecution owing to her political beliefs. Her application for asylum has been rejected and she is now in detention. Izabel received notice of the decision on 10 May. On 17 May she advised her lawyers that she wished to challenge the decision to refuse her asylum application.

Luisa, also a Brazilian citizen, was refused asylum in the UK on 1 June and following that decision was administratively removed to Brazil on 10 June. Luisa did not challenge the decision to refuse her asylum when she was in the UK, but on 20 July following a meeting with her legal advisers in Brazil she has decided to appeal.

Advise both Izabel and Luisa on the steps that they could take to reverse the asylum decisions against them. If any appeal that they make is refused, are there any steps that Izabel could take to prevent her removal or that Luisa could take to have the decision against her reviewed?

(12 marks)

- (b) Jasmina and Shada are Canadian nationals and Hasan is a Moroccan national.
- (i) Jasmina wishes to study medicine in the UK and obtained entry clearance from the High Commission. However, on arrival at Heathrow airport she is refused leave to enter.
- (ii) Shada wishes to study agriculture in the UK but had her application for entry clearance refused by the High Commission. In spite of this she flew to Stansted airport where she was refused leave to enter.
- (iii) Hasan obtained a visa from the British Embassy in Rabat in Morocco, to come to the UK as a visitor. Since the visa was granted he has met someone in Morocco who has settled in the UK and whom he intends to marry. He now wishes to go to the UK for that purpose. Although he travels to the UK as a visitor in accordance with his original visa, on arrival at Heathrow airport he seeks to change his visa to that of a marriage visitor. This change is refused.

Compare and contrast the rights of appeal of Jasmina, Shada and Hasan against the refusal to grant them leave to enter. How would your answer differ if Jasmina was refused entry on return to the UK from holiday having previously entered with entry clearance to study in the UK for the duration of her chosen course?

(13 marks)

(Total: 25 marks)

Question 4

Sanjeev and Manisha became engaged to be married in Sri Lanka in 2008 when they were 21 and 16 respectively. In May 2010 Manisha went to the UK as a Tier 4 (Child) student to study chemistry at University on a three year course. In September 2010 Sanjeev was granted a visitor's visa and he came to the UK later that month. They have now decided that they would like to marry whilst they are both in the UK in January 2011.

Since they arrived in the UK, Sanjeev and Manisha have been staying with Sanjeev's uncle Sadun and his Polish partner Cesia. Sadun and Cesia lived together in Gdansk and came to the UK in 2007 when Cesia was appointed to a lectureship at a UK university.

Sadun and Cesia have indicated that they also wish to marry in early 2011. In 2009 they adopted Sadun's two nephews, who are orphans currently staying with his mother and father in Sri Lanka, and are now seeking their admission to the UK. [Note: Adoption orders made in Sri Lanka are recognised by the UK]

The two couples expect that once Sanjeev and Manisha are married, Sanjeev will be able to apply for his leave to be extended. Sanjeev will then be employed by Sadun and Cesia to look after the two boys.

Before carrying out their plans the two couples have decided to seek the advice of Kempston, Manor & Co who are immigration law specialists. What advice should Kempston, Manor & Co give Sanjeev, Manisha, Sadun and Cesia on the immigration law implications of their plans?

(25 marks)

End of Examination Paper

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