



THE CHARTERED 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, 8th edition, Phelan and Gillespie, Oxford University Press 2013.**
- Candidates must comply with the CILEX 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 CILEX 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. Explain and analyse the current approach to Article 8 European Convention on Human Rights (ECHR) arguments, with particular reference to the five step approach in *Razgar*, and recent developments in case law and the immigration rules where the family life includes children.

(25 marks)

2. (a) Explain the rights of family members of an EU national who has exercised Treaty rights in the UK, and explain how these rights are affected on the death or departure from the UK of that national or on the termination of a relationship in which that national was involved.

(13 marks)

- (b) Assess the development of the law where British citizens exercising free movement rights with family members outside the UK return as a family to settle in the UK, and explain how these provisions have developed where no actual free movement has taken place.

(12 marks)

(Total: 25 marks)

3. (a) Explain how the British Nationality Act 1981 affected the basis upon which a person could become a British citizen by birth or descent.

(17 marks)

- (b) Explain and analyse which categories of Commonwealth citizens retained the right of abode on the passage of the British Nationality Act 1981, but did not become British citizens.

(8 marks)

(Total: 25 marks)

4. Compare and contrast the ways in which people can be deported or administratively removed from the UK, the rights to appeal or otherwise oppose removal or deportation, and the structure of any appeal processes against these decisions.

(25 marks)

Turn over

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

Question 1

John is a 22-year-old British citizen living and working in the UK. He wishes to sponsor his partner, Rose, to come and join him here. Rose is a 21-year-old Kenyan national living in Kenya. John met Rose when travelling three years ago and spent six months in Kenya with her at this time. They have maintained their relationship by visits since this time and Rose has just returned to Kenya after the completion of a six month visit to the UK. Rose speaks good English.

John has recently proposed to Rose and is unsure whether they should get married in Kenya or whether Rose should come to the UK as his fiancée and for the wedding to take place here.

John works as a marketing analyst at IT Solutions Ltd in Bedfordshire and is currently earning £22,000 per year. He has worked for the same company for two years. He does not have any savings. Rose is a trained nurse and is hoping to get work in the UK as soon as she can. John knows a doctor at the local hospital who has advised him that he will be able to secure a job for Rose.

John is living in his own one-bedroomed flat in Bedford and is currently paying a mortgage instalment of £600 a month. Rose will live with him at his flat on arrival in the UK.

John wishes to know:

- Whether he would be best advised to sponsor Rose as a fiancée or a spouse given his circumstances.
- How the Entry Clearance Officer will determine the genuineness of their relationship.
- Whether he will have sufficient income to sponsor Rose.
- Whether his flat is big enough to be classed as adequate accommodation.
- Whether Rose will be able to work on entry to the UK and whether this will be a material factor in his application.
- Whether Rose will need to pass an English language test.
- What leave Rose would be granted in each situation and when she will be eligible to apply for indefinite leave to remain.

Advise John.

(25 marks)

Question 2

Claude is a homosexual from Cameroon who has claimed asylum in the UK. Homosexuality is illegal in Cameroon. The Amnesty International Annual Report on Cameroon 2012 states that the penal code criminalises homosexual conduct and there was a recent arrest of a man charged with engaging in homosexual acts. The Department of State Annual Report on Cameroon 2012 states that homosexuality is illegal and imprisonment can be up to five years. Homosexual persons usually keep a low profile for fear of discrimination, social stigma, harassment or imprisonment.

The Home Office Annual Report on Cameroon 2012 states that there is an underground homosexual culture, and the police tolerate it to a degree. Occasionally police make raids and arrest known homosexuals. People arrested are tried and usually convicted; private acts attract sentences of up to five years, but public displays of homosexual conduct are punished with lengthy sentences and sometimes the death penalty.

Claude has been detained in a Cameroonian prison for two weeks in the past, on the grounds of his homosexuality, and was beaten severely on a number of occasions throughout the detention. He was detained in an overcrowded cell in basic, unsanitary conditions and given very little food and drink. On one occasion during his detention he was tortured by having one of his feet crushed in a press. He has a medical report to support this. He managed to escape detention by bribing one of the security officers. He is afraid that if he is returned he will be imprisoned for a long time in these poor conditions and tortured again.

His claim has been refused by the Home Office on the grounds that he could live discreetly and, in any event, homosexuality is mainly tolerated by the police. It continues that he can go and live in the south of Cameroon as there is an area there that does not enforce the laws on homosexuality and where he can live freely. He does not know anyone in the south of Cameroon, has never been there and is unlikely to get work there. There is currently a food shortage in the region they propose to send him to.

Advise Claude as to whether he can be recognised as a refugee in the UK, and/or be granted protection under Article 3 ECHR, and how he can refute the Home Office's assertions in his case.

(25 marks)

Turn over

Question 3

- (a) Andrew Harrison is the Director of an international lottery company, Scratch Cards and Co Ltd. The company is registered on the stock exchange. Thirteen months ago Scratch Cards and Co took over a lottery business in Mongolia and want to transfer certain Mongolian staff to work in the UK, as they have specific skills that the UK employees do not possess. Scratch Cards and Co also wish to employ some interpreters from Mongolia to work within the UK business. They have found it very difficult to find Mongolian speakers in the UK.

Andrew is keen to find out how to go about this process and what the company must do to maintain their sponsorship duties.

Andrew requests your advice on:

- Which categories of the Points Based System will be relevant and how many points each worker will need to achieve in each category.
- The formalities the company must comply with in order to sponsor the workers.
- The test/s that needs to be passed in order to be successful in employing the applicants.
- What leave the applicants are likely to get on a successful application.

Advise Andrew.

(18 marks)

- (b) Betty is an American national living in the USA and has just won the lottery. Betty wants to come to the UK to live near her sister, Grace. Betty has £1.2 million held in a Barclays Bank account which she wishes to invest in Grace's company in the UK. Betty does not wish to take part in the day to day running of the company, but simply to help Grace expand the business and hopefully get some return on her investment.

Betty wishes to know:

- Under which category of the Points Based System she should apply to enter the UK.
- Whether she will meet the requirements of this category.
- How many points must she score under the relevant appendices; and
- The initial leave she will be granted if she is successful in her application.

Advise Betty.

(7 marks)

(Total: 25 marks)

Question 4

- (a) Gurpreet is an Indian national living in India. He is 19 years old and wishes to come to the UK to undertake a three-year undergraduate degree in English law at the University of Kempston, an approved education provider on the UKBA's register of sponsors. He has studied English for several years now and can speak and write it well. He has good qualifications and is keen to study to become a lawyer and hopes to work in the UK once he has completed his degree.

Gurpreet's family are happy to pay for his tuition fees out of their savings, but Gurpreet is keen to take up part-time employment in the UK, alongside his studies, in order to fund his living expenses. He only has £300 in savings so needs to ensure that he can work to maintain himself.

Gurpreet's aunt and uncle live in the UK, about 20 miles from the university, so he intends to live with them at first while he saves some money. He eventually hopes to become independent and live in university accommodation.

Gurpreet seeks your advice on:

- Whether he will meet the requirements of the immigration rules to enter the UK as a student.
- What the university must do to sponsor him to come to the UK and what duties the university would need to comply with for the duration of his course.
- Whether a law degree would meet the requisite academic requirements.
- How much money he will be expected to have to maintain himself.
- Whether he will be able to work at the same time as studying in order to fund his living expenses.
- What leave he would be granted if his application was successful.

Advise Gurpreet.

(15 marks)

- (b) Eva is a 24 year old South African national living in South Africa. She is a member of an amateur touring theatre company who are putting on a production in the UK over the summer, at the local Playhouse in Bedford. The performances are weekly, starting at the end of June 2014 and finishing at the beginning of September 2014. Eva has a cousin, Sarah, who lives in Bedford and who she hopes to stay with during her time here. Eva intends to help Sarah out with the bills and living expenses while she is here but her cousin will not charge her any rent. Eva has £3,500 in savings. She wishes to know:

- Whether she is able to visit the UK and take part in these performances.
- If she can satisfy all the requirements of the immigration rules.
- If successful, the likely period of leave she would be granted.

Advise Eva.

(10 marks)

(Total: 25 marks)

End of Examination Paper

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