PART II (2 hours, 35 minutes)

2 ESSAY QUESTIONS; 6 MULTIPLE CHOICE

1. Unless you are typing the exam, please write your essay answers in the bluebooks provided. Write on every other line and on every other page. (I.e., do not write on the backs of the pages. The ink shows through.) Begin each question in a separate bluebook. Write your student I.D. on the exam and on the outside of each bluebook.

2. Part C uses multiple choice questions. The questions are numbered to follow the questions in Part I and you should add your answers to the Scantron card. The multiple choice questions are based on the general facts in this section, but they do not depend on the specific facts in Parts A or B.

3. If you believe that there is an error or ambiguity in any of the questions, note the error or ambiguity and any assumptions you are making in answering the question.

4. You are in the State of Misery, a mythical jurisdiction in which there is very little law and in which the courts are influenced by precedents from other states. The jurisdiction has, however, adopted the following provisions:

a. a statute of limitations of five (5) years for all property actions;
b. a race-notice recording act;
c. the common law rule of implied reciprocal servitudes;
d. a state constitution identical in all relevant respects to that of the United States;
e. all applicable federal laws including the Fair Housing Act.

FACTS

Gotham College is a liberal arts school in the older part of a rust-belt city in the northeast. The city’s industrialists donated a cluster of mansions to founded a college for women in the thirties. About a decade ago, the school went co-ed and created a new program that specializes in educating students with emotional, physical and educational differences. As the school’s student body has increased and attracted students with more varied needs, more students have chosen to live off campus.

The area to the south of the school, known as Squirrel Hill, once contained the city’s most desirable residences. Michael Mason, the city’s most prominent early developer, built the homes in the four blocks of Squirrel Hill immediately adjacent to campus between 1905 and 1925. These houses were overwhelmingly constructed as large single-family structures. In recent years, however, the area has changed substantially. Carnegie Avenue, which separates the mansions at the core of the Gotham campus from Squirrel Hill, was once the city’s most exclusive residential address. Today, the busy street features a coffee shop on the first floor of one of the homes, a popular arts and crafts shop in another, and a pharmacy on the corner lot where the original home burned down years ago. Forbes Avenue, which borders the development to the east, faces one of the more popular restaurant districts in the city, and a number of the Forbes Avenue homes have been converted into small restaurants, ice cream parlors, book stores, and clothing shops. The interior blocks have remained overwhelmingly residential, but some contain day care homes, home offices for attorneys or real estate agents, and at least one dental office. Gotham students rent many of the remaining homes, some of which have been remodeled into separate upstairs and downstairs units.
Part A (Essay; 60 minutes)

Barney Byer has entered into a contract to purchase 1539 Carnegie Ave., located next to the pharmacy at the corner of Forbes and Carnegie. The house, built in 1911, has been divided into two rental units and needs substantial repairs. The Gotham dorms are not handicapped accessible, and Gotham College promises Byer that if he remolds the house to provide wheelchair access, Gotham will subsidize the cost, and guarantee rental of the first floor apartment for ten years.

Byer has just received the preliminary title report. It indicates that the deeds to the first eight of the seventy-two homes Mason sold were restricted to “single family residential use.” (See Morgan Ave. lots 1-8 on map.) Building, however, stopped after the Panic of 1907, and the next lots sold were the corner lot at Forbes and Carnegie on which the pharmacy is located, and 1539 Carnegie Ave. (the lot Byer plans to buy), both of which were sold without restrictions in 1910. Between 1910 and 1915, twenty other lots were sold, five with restrictions and the rest without. (The numbers indicate the order in which these lots were sold. “nr” means “no restrictions;” all of the other lots are restricted.) The remaining lots were sold between 1915 and 1925 and all contain restrictions identical to those in the deeds of the first lots sold. All of the deeds are recorded.

Byer wants to know whether 1) he can proceed with his plans for the property if he buys the house and 2) he can refuse to proceed with the closing. (He tells you that the contract of sale provides that the seller will deliver a general warranty deed, guaranteeing title “free and clear of all encumbrances except those of record,” the deed does not indicate that time is of the essence, and you do not need to address potential Fair Housing Act issues.)

Part B (Essay; 70 minutes)

Byer resolves the issues in A., buys the house pursuant to a general warranty deed, and completes the remodeling, converting the house into three separate units. He enters into a contract to rent one unit to three students, but they have not moved in. He is about to rent the first floor apartment to four handicapped students and an able-bodie student assistant when the city council passes an ordinance changing the area from U-1, single family residential, to U-2, two family residential use only. The ordinance defines “family” as any number of people living together who are related by marriage, blood or adoption, or up to three people living and cooking together as a single housing keeping unit. The city had long either ignored or granted variances to the existing non-single family uses, and the ordinance exempts all uses previously authorized by variances, and provides five years to phase out commercial uses not already covered by a variance. [No other houses in the area have more than two residential units.]

Byer ignores the ordinance, rents the first floor unit to the handicapped students, and the remaining upstairs unit to two students on the meal plan at Gotham College. Having ten students in the housing greatly increases traffic and parking difficulties on the already crowded street, the police have been called repeatedly because of loud parties that last past midnight, and the neighbors complain that the small yard behind the house reeks of beer.

Byer has complained to the College and his tenants to no avail, and the City has refused to grant him a variance. Advise Byer of the potential liability he faces if sued by the city or his neighbors, any defenses he might assert, and any recourse he might have under the deed if he is not able to continue to rent the three units he has refurbished at considerable cost. Byer informs you that another attorney is helping him with potential landlord-tenant problems, any contract disputes with Gotham College, and the servitude issues raised in Part A and you may ignore them.
Part C (Multiple Choice; 15 minutes)

Genevieve owned a large undeveloped lot between Wilkins Place to the west and Woodland Road to the East. Woodland Rd. runs through the Gotham campus, and the college owns the land on which it is located. The college has long posted signs that say: "Gotham College. Private Road. Entrance for authorized guests only." The College has never policed use of the road, but it has installed speed bumps, and campus security occasionally asks unauthorized visitors to leave.

In 1975, Genevieve sold the portion of the lot facing Wilkins Place to Arthur. Arthur constructed a large house on the premises in 1981, blocking any access from the remaining portion of Genevieve's lot to Wilkins Place. Genevieve, who on her rare visits always accessed the lot from Woodland Rd, never objected. Genevieve died in 2001, leaving the property to her daughter, Dorothy. Dorothy founded a storage company, using portable containers located on the lot. Gotham students storing their belongings over the summer are her prime customers.

A sexual assault on campus persuades Gotham to install electronic gates across Woodland Rd. Dorothy applies for a card opening the gate, but, at least in part because of student complaints that Dorothy has been overcharging them, Gotham refuses to make an exception.

15. If Dorothy sues Arthur for a right of way over Arthur's lot, her best argument will be for:
   a. an easement implied by prior use;
   b. an easement implied by necessity;
   c. estoppel;
   d. an easement by balance of the hardships.

16. If Dorothy can otherwise establish the elements necessary for an implied easement over Arthur's lot, Arthur's best defense will be that:
   a. He extinguished the easement through adverse possession.
   b. An injunction on Dorothy's behalf should denied because of balance of the hardships, and her remedy should be limited to damages.
   c. He acquired a prescriptive easement over what would otherwise be Dorothy's right of way.
   d. Implied easements by prior use should never be issued in favor of the grantor.

17. If Dorothy sues Gotham College for an implied easement, she will
   a. win because she can establish prior use;
   b. win because she can establish strict necessity;
   c. win because she has changed her position in reliance on continued access to Woodland Rd.;
   d. lose.

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18. If Dorothy sues Gotham College for a prescriptive easement, which facts will best support her claim?
   a. She was aware of the private road signs, but believed that they did not apply to her because she had a right of way.
   b. She was aware of the private road signs, but knew that Gotham never enforced them.
   c. She was aware of the private road signs, but intentionally flouted them.
   d. She was aware of the private road signs, but believed that her business made her an authorized visited.

19. If Dorothy sues Gotham College for an easement by estoppel, Gotham College's best defense will be that:
   a. Gotham College never gave Dorothy express permission to use the road.
   b. Gotham College would suffer a substantial hardship if it could not limit access to the road.
   c. Only Genevieve (through her sale to Arthur) changed her position in reliance on access to the road and Genevieve's reliance is not transferable to Dorothy.
   d. Dorothy has suffered no detriment in reliance on access to the road because her storage business, which uses portable containers, can be moved elsewhere.

20. If Gotham College sues for an injunction to enjoin Dorothy's use of the road, and Dorothy asserts a balance of the hardships defense, which fact will best support Dorothy's position?
   a. Damages for Dorothy's continued use of the road will be nominal.
   b. Dorothy's lot will otherwise be landlocked.
   c. Dorothy relied on her access to the Woodland Rd. in establishing her business.
   d. Dorothy mistakenly believed that she had a right of way over Woodland Rd.

END OF EXAMINATION
ENJOY THE SUMMER!
<table>
<thead>
<tr>
<th>WILKINS PL.</th>
<th>WOODLAND RD.</th>
<th>GOTHAM COLLEGE</th>
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<tr>
<td>Arthur's lot</td>
<td>Dorothy's lot</td>
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### CARNEGIE AVENUE

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### SQUIRREL HILL

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### MORGAN AVE.

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§ 1710.2. Disclosure of AIDS information in real property transfers; Preemption by state

(a) No cause of action arises against an owner of real property or his or her agent, or any agent of a transferee of real property, for the failure to disclose to the transferee the occurrence of an occupant's death upon the real property or the manner of death where the death has occurred more than three years prior to the date the transferee offers to purchase, lease, or rent the real property, or that an occupant of that property was afflicted with, or died from, Human T-Lymphotrophic Virus Type III/Lymphadenopathy-Associated Virus. As used in this section, "agent" includes any person licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code. As used in this section, "transferee" includes a purchaser, lessee, or renter of real property.

(b) It is the intention of the Legislature to occupy the field of regulation of disclosure related to deaths occurring upon real property and of AIDS in situations affecting the transfer of real property or any estate or interest in real property.

(c) This section shall not be construed to alter the law relating to disclosure pertaining to any other physical or mental condition or disease, and this section shall not relieve any owner or agent of any obligation to disclose the physical condition of the premises.

(d) Nothing in this section shall be construed to immunize an owner or his or her agent from making an intentional misrepresentation in response to a direct inquiry from a transferee or a prospective transferee of real property, concerning deaths on the real property.


Restatement of Contracts - Second

§ 129. Action in Reliance; Specific Performance

A contract for the transfer of an interest in land may be specifically enforced notwithstanding failure to comply with the Statute of Frauds if it is established that the party seeking enforcement, in reasonable reliance on the contract and on the continuing assent of the party against whom enforcement is sought, has so changed his position that injustice can be avoided only by specific enforcement.

(d) Transfer of possession and reasonable reliance. Where specific enforcement is rested on a transfer of possession plus either part payment of the price or the making of improvements, it is commonly said that the action taken by the purchaser must be unequivocally referable to the oral agreement. But this requirement is not insisted on if the making of the promise is admitted or is clearly proved. The promisee must act in reasonable reliance on the promise, before the promisor has repudiated it, and the action must be such that the remedy of restitution is inadequate. If these requirements are met, neither taking of possession nor payment of money nor the making of improvements is essential.