INSTRUCTIONS FOR PART I ONLY:

1. Write your Campus I. D. on the Scantron card. Do not write your name.

2. Answer by completely filling in the appropriate blank. Use a #2 pencil. Press hard. Do not make extraneous marks on the Scantron card. Choose the best answer. There may be more than one correct answer. If you believe that there is an error or ambiguity or other matter on which you would like to comment, write your comments in a separate bluebook labeled "Part I" on the outside of the bluebook.

3. Circle the answer on the question sheet in addition to filling out the Scantron card. You must hand in both the questions and the Scantron card at the end of the exam.

4. In answering these questions, you are to assume, unless the question specifies otherwise, that you are in a mythical jurisdiction that has adopted:
   a. a statute of limitations of five (5) years for all property actions;
   b. a race-notice recording act unless otherwise specified;
   c. the majority rule or, if there is no clear majority rule, the cases in the textbook;
   d. the disclosure statute attached to this examination.

You should also assume that any reference to a title insurance policy is a reference to a standard policy with the exclusions and exceptions attached to this examination.
PART II (2 hr., 28 min.)
ESSAY QUESTIONS (1 question, 3 subparts)

1. Unless you are typing the exam, please write your 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. The three questions are equally weighted.

2. 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 statutes:
   a. a statute of limitations of five (5) years for all property actions;
   b. a race-notice recording act; and,  
   c. a statute recognizing implied reciprocal servitudes, but not third party beneficiaries.

ESSAY QUESTIONS

In 1975, GreenTrees, a back to nature group, purchases a large undeveloped tract of land in a hilly, forested area. Each of the original twelve members of the group, upon payment of a fee equal to one-twelfth of the purchase price, is assigned a parcel designated A through L on the grid below (see map) and receives a deed from GreenTrees that specifies:

Covenant to Run with the Land: The land in this parcel is to be kept in its natural condition. The existing vegetation is to be preserved and allowed to develop naturally. No clearings, permanent structures, pavement or motor vehicles of any kind are permitted, nor is any commercial use of the property to be allowed without the express written permission of GreenTrees.

The owners of parcels A, C, E, G, H, and K record their deeds. The others do not.

Over the next twenty years, eleven of the lot owners camp on the properties, using removable tents. Five add outhouses. Four build wooden lean-tos, three park recreational vehicles (RV’s) with sleeping facilities on their lots, two build small wooden cabins, and one moves a mobile home onto his lot.

In 1995, the owner of parcel L dies. Her son, Sam, who has camped on the property every summer since he was 9, inherits the property and erects a large tent in a grassy field on the lot, killing most of the vegetation under the tent. He later plants a small garden in the area behind the tent. After several years, he is transferred to another city, and enters into a two year lease with Terry. Terry moves into the tent on a permanent basis, and shortly thereafter begins to raise chinchillas. To house the animals, he buys a specially designed portable pen, partially burying it in the ground, and allowing the surrounding vegetation to cover the sides. He also gradually increases the size of the garden Sam planted until it covers a quarter of the property, and produces enough food to feed all of the chinchillas. Although Terry initially began raising the chinchillas as pets, he now sells most of the animals he breeds for $100 each.
Part A: The neighbors on Lots G and E complain that the chinchillas, who are nocturnal creatures, are noisy at night, and they occasionally escape, digging up nearby gardens. The neighbors seek an injunction requiring Sam and Terry to restore the property to its original condition, removing the tent, garden and chinchilla pen. They also request damages in the alternative that the court denies the injunction. Discuss any defenses that Sam and Terry may have, and the likelihood that they will prevail. Your research discloses that Sam’s mother was the last of the twenty original owners to pay the lot fee and receive a deed from GreenTrees, and that neither Sam nor Terry knew of the deed until the neighbors filed their suit.

Part B: While the litigation is pending, Sam enters into a written contract to sell the lot to Belinda for $100,000. The contract specifies that the seller will deliver “good merchantable title free and clear of all encumbrances, except for liens and encumbrances of record.” Belinda is eager to purchase the lot because she has recently received notice from her condo manager that she can no longer keep her four pet chinchillas in the condo. She did not tell Sam about any of this before signing the contract, and when she mentions it to Sam several weeks later, he informs her for the first time about the pending litigation, but tells her that he believes that he will have the litigation settled before the closing, and he intends to remove the tent and the chinchilla pen anyway so she will not have to worry about a potential violation.

Advise Belinda whether she had any grounds to refuse to proceed with the closing, any possible recourse against Sam after the closing if she is unable to proceed with her proposed use of the property, Sam’s possible responses, and the likelihood of prevailing.

Part C: Belinda settles the dispute and now owns Lot L. She builds a small cabin, crossing lot C in her sports utility vehicle to get to the lot. Four years after the purchase, the zoning board, primarily for aesthetic reasons, passes a new ordinance requiring lot owners in the area to fence in their property. The ordinance provides for some flexibility in the design of the fence, but for no exceptions from the requirement. She and several neighbors (GreenTrees members who object to the infringement of their liberty) come to see you about the possibility of attacking the validity of the fencing requirement and regaining Belinda’s access to the street.

In the course of your research, you discover that GreenTrees, in addition to banning pavement and motor vehicles, made no effort to establish roads or other rights of way through the area. Instead, GreenTrees members freely allowed each other to cross the lots in the tract at will. When Terry leased Lot L from Sam, for example, he parked in the street outside the tract and walked across lot E to get his tent. Sam and his family had done the same thing before him. Belinda prefers access across lot C, but occasionally used E when C was muddy. None of the owners had ever objected. You discover further that not only was Sam’s mother the last to pay the required fee and receive a deed from GreenTrees, but that the owner of lot E was the second to last purchaser. You try contacting the zoning board and are informed that while there may be some flexibility in the design of the required fence, there are no provisions for exceptions from the fencing requirement. Evaluate the grounds for challenging the fencing requirement, and the prospects for success.

END OF EXAMINATION
HAVE A NICE SUMMER!
§ 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 fail-
ure 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-Lymphotropic
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 dis-
ease, 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 re-
sponse to a direct inquiry from a transferee or a prospective transferee
of real property, concerning deaths on the real property.

AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (10-17-92)
WITH ALTA ENDORSEMENT - FORM 1 COVERAGE
and
AMERICAN LAND TITLE ASSOCIATION LEASEHOLD LOAN POLICY (10-17-92)
WITH ALTA ENDORSEMENT - FORM 1 COVERAGE

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys’ fees, expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement, new or hereafter erected on the land; (iii) a separateness in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien, encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding for coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

3. (a) Deeds, liens, encumbrances, adverse claims or other matters:

(b) not known to the Company, nor recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;

(c) resulting in loss or damage to the insured claimant;

(d) attaching or liening subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage or any statutory lien for services, labor or material or to the extent insurance is afforded herein as to assessments for street improvements and construction or completed at Date of Policy); or

(e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.

4. Unenforceability of the lien of the insured mortgage because of the incapacity or failure of the insured at Date of Policy, or the incapacity or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.

5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.

6. Any statutory lien for services, labor or materials (or the claim or priority of any statutory lien for services, labor or materials over the lien of the insured mortgage), arising from an improvement hereafter erected on the land which is constructed for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.

7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors’ rights laws that is based on:

(i) the transaction creating the interest of the insured mortgagee being obtained an involuntary conveyance or involuntary transfer or

(ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination or

(iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer result from the failure:

(a) to timely record the instrument of transfer; or

(b) of such recordation to impair notice to purchaser for value or a judgment or lien creditor.

The above policy forms may be issued to affect either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following General Exceptions:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown or existing liens by the records of any taxing authority that levies taxes or assessments on real property by the public records.

2. Any facts, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.

3. Encumbrances, liens or encumbrances, or claims thereof, which are not shown by the public records.

4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.

5. (a) Unpatented mining claims; (b) reservations or exceptions in parcels or in Acts authorizing the issuance thereof; (c) water rights, claims or titles to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

[Initials: CSC and LSC]