We defend each answer with an explanation based on citations from the book. We may quote more content than necessary to put our answers into context and to make this quiz a richer learning experience. Citations from the book appear on a yellow background in Times-Roman. Paragraphs labeled as “Notes” contain supplemental information we think useful but which is not tested on the course final. Paragraphs labeled “Comments” are the author’s comments and/or opinions and may be ignored.

**Recommendation:** If you don’t fully understand any particular question or the explanation of its answer, we suggest you re-read the section in the book on which the question is based.

1. **1.4: Protected Classes**

   Thelma is a civil, responsible, and friendly drunk. She has trouble keeping a job because she is often too drunk or hung-over to drive to work. She lives on disability and gifts from a rich boyfriend. Many tenants have complained to their property manager, Bob, that she sets a bad example for their children. Thelma’s lease is up next month. Bob **cannot** decline to her renew her lease because she is an alcoholic.

   **True** Thelma is disabled and is therefore entitled to the protections of the Federal Fair Housing Act. According to the Act, a handicap is a physical or mental impairment which substantially … limits one or more of a person’s major life activities, or a record of having such an impairment, or one regarded as having such an impairment with the exception of users of illegal drugs or any other illicit activity. By this definition, Thelma is disabled: her drinking limits her life activities; specifically her driving and her ability to keep a job.

   If Thelma’s alcoholism interfered with the rights of others, or if she failed to pay her rent, or if her behavior posed a threat to others; or if she used illicit drugs; then Bob would have legal justification to not renew her lease. (Click here for an article which describes the fair housing rights of alcoholics.)

   **Note #1:** Because Thelma is disabled, she is entitled to any reasonable accommodation which would make her disability less burdensome (e.g., a larger refrigerator to store more beer). Should Bob decline to provide Thelma with a reasonable accommodation, she would be within her rights to lodge a complaint with the DFEH (HUD’s proxy in California). Should the complaint be investigated by the DFEH, Bob would have to justify to an investigator why he could not accommodate Thelma’s request (see §2.3.3.2: “Reasonable Accommodation”).

   **Note #2:** Remember that “Source of Income” is one of the twelve State protected classes (see §1.4: “Protected Classes”); therefore, as with any protected class, Bob must ignore her source of income in making any decision about her lease even if he might disapprove of her use of disability income to buy beer or if he suspects her relationship with her sugar daddy is likely to be short-lived.

2. **1.4: Protected Classes**

   Landlords may inquire about an applicant's immigration status but only if they make the same inquiry of every applicant.

   **False** The prohibition against inquiring about a proposed tenant’s immigration status is absolute.

   **Citation:** Effective January 2008, immigrants and foreign citizens acquired limited protections against housing discrimination. Specifically landlords may not discriminate based on either immigration or citizenship status. Landlords are prohibited from making any inquiry into immigration or citizenship status or requiring any prospective tenant to make a statement about immigration or citizenship status.
3. **1.5: Federal vs. State Law**

All violations of federal fair housing and lending laws are also violations of California’s fair housing and lending laws.

**True.** The textbook makes this point repeatedly:

§1.5: Since federal fair housing violations are de facto state fair housing violations with comparable enforcement procedures and remedies, HUD subsidizes the California’s Department of Fair Employment and Housing (DFEH) to enforce its fair housing laws.

§2.1: In California, HUD has delegated its enforcement of the fair housing laws to the DFEH since California fair housing laws are substantially equivalent to the federal fair housing laws.

§2.4: HUD has declared that California’s fair housing laws are “substantially equivalent” to the FHA.

**Note:** The federal fair housing law is subset of the State fair housing law; therefore, any violation of the federal law is also a violation of the State law but, the reverse is not true. For example, discrimination based on “source of income” is not illegal under Federal law but it is under State law.

4. **2.2.2.2: Discriminatory Restrictive Covenants**

An illegal restrictive covenant written into a trust deed must be removed before conveyance.

**False.** Transferees have the option of removing the illegal restrictive covenant but its removal is not required. If an illegal restrictive covenant is not removed from the deed, it is unenforceable.

**Citation:** Sacramento passed a law (Government §12956.1(b)(1)) which requires anyone who provides any property document must provide a notice informing the recipient that any restrictive covenant based on any prohibited consideration is void and that property owners have the right to have such language removed.

**Note:** Pictured above is a typical discriminatory restrictive covenant (source) in a deed. Although provision 14 is unenforceable, provision 15 is enforceable by neighbors or home owner associations. (“Deed restrictions” are explained here.)

5. **2.2.3.2: Discrimination via Agency**

Bob asks his agent, Linda, if the seller’s neighborhood is transitioning from a Latino to a Yuppie (“Anglo”) neighborhood. Linda answers, “yes, I think so. Trader Joe’s will be opening in the building formerly occupied by Gigante Supermercado.” Linda is in violation of the FHA.

**True.** By answering Bob’s question, Linda violates the FHA because the FHA prohibits agents from answering questions related to the protected characteristics of a neighborhood. Since ethnicity is a protected characteristic, Linda broke the law by answering Bob’s question.

**Citation:** **Question:** Can a real estate agent answer questions about the protected characteristics of a neighborhood?; **Answer:** No.
6. **2.2.3.1: Steering**

The Khorasanis ask Betty to show them homes in Persian neighborhoods. Betty says, *"I'm sorry, but the law forbids me from selling property on an ethnic basis."* Betty’s response is considered correct by the DFEH.

**True**  This is the correct response recommended by attorneys from HUD (the DFEH is HUD’s proxy in California).

**Citation:** To the buyer who requests to see homes only in Asian neighborhoods, say, *“I’m sorry but this office is not permitted to list or sell property on a racial basis.”*

If Betty had taken the Khorasanis to only Persian neighborhoods, she would be breaking the fair housing laws by committing the illegal practice known as “steering” (DRE Reg. 2780(b)). This would be true even if the Khorasanis had said to Betty, *“I don’t want you to show me homes except in Persian neighborhoods!”* But if, the Khorasanis had demanded of Betty, *“I don’t want to see any homes that are not in Tehrangeles”* (a Persian neighborhood in Los Angeles) she would not be in violation of the fair housing laws.

A licensee can take a buyer to any neighborhood their buyer specifies but the licensee can not select neighborhoods for their buyers based on any prohibited characteristic even if requested to do so by their client.

7. **2.3.3.3: Exemptions**

A private community can exclude children if 80% of its units are occupied by someone 55 years of age or older and the community provides a …

(A) laundry facility, running track, and high speed Internet.
(B) business center, conference rooms, and handball court.
(C) transport service, card rooms, and health center.
(D) tennis courts, tattoo parlor, and sports bar.

**(C)** A community may exclude children if 80% of its units are occupied by one or more persons 55 years or older AND if it provides significant facilities and services designed to meet the physical or social needs of older persons.

Since many seniors do not drive; such seniors would likely value a transport service to local malls, banks, and medical facilities. Since many seniors are preoccupied with their health, such seniors would likely value an onsite health center staffed by a full-time nurse. Since many seniors find it difficult to travel outside of their community to meet others, such seniors would likely value social centers such as card rooms.

Certainly adult communities can provide amenities which also appeal to younger persons (including tattoo parlors ☹), but to qualify for FHA’s senior housing exemption, communities must also provide significant facilities and services of interest primarily to older persons. (Click here for a link to a site which offers information and reviews of more than 500 active 55+ adult communities.)

**Citation:** The senior housing exemption allows buildings to exclude children under the following conditions: (1) All occupants are 62 years of age or older with two exceptions: (a) resident managers and maintenance personnel and (b) occupants since 1989. (2) Buildings where at least 80% of the units are occupied by one person 55 years of age or older and the building has significant facilities and services designed to meet the physical or social needs of older persons.
8. 2.3.3.3: Exemptions

Mrs. Murphy owns a duplex. She lives in her downstairs unit and rents her upstairs unit. In advertising for a tenant, which of the following statements would be legal?

(A) “You should be able-bodied – 25-steps up to the front door!”
(B) “Absolutely no liberals, no progressives, and no socialists!!”
(C) “Only women need apply.”
(D) “Not suitable for children.”
(E) “No druggies, no smokers, and no drunks.”

(B) As offensive as this statement might be, it is not illegal. Political persuasion is not a protected characteristic (see note). All the other statements are illegal because each states a preference for individuals from a protected group (see §1.4 for a list):

(A) Shows a preference for persons who can easily climb stairs and, correspondingly, discriminates against persons with mobility disabilities. To make this statement legal, Mrs. Murphy would only have to remove the first five words leaving: “25-steps up to the front door!”. Keep in mind the admonition we gave in §4.2: when advertising, “Describe the property, not the person.”

(C) Shows a preference for women.

This statement would only be legal if both of Mrs. Murphy’s units (upstairs and downstairs) had common living facilities (e.g., a common kitchen). California’s fair housing law permits owner-occupants advertising for boarders (i.e., a tenant who shares living space with the owner-occupant) to discriminate in favor of the boarder’s gender. This exemption applies only to a single boarder. If advertising for two boarders, an acceptable ad might read “Seeking two boarders one of which must be female.”

(D) Shows a preference for a tenant who does not live with a child; therefore, this statement discriminates on the prohibited basis of family status. If the home was truly unsuitable for children, Mrs. Murphy could describe the features which made it so; for example, “We live in a bucolic setting replete with poison oak, swamps, tics, snakes, and man-eating black bears.”

(E) All Mrs. Murphy would have to do to make this statement legal is to strike “no drunks” or to change it to “no drunks under the age of 21.” As already mentioned, by statute only addictions to legal substances qualify for protection as a disability and then only if the addiction limits one or more of a person’s major life activities.

Citation: Owners must not publish any advertisement or notice for boards or roomers giving preference to applicants on any prohibited basis EXCEPT for sex – this exception only applies to advertising for boarders.

Note: Most authorities agree that the Unruh Civil Rights Act prohibits all “arbitrary discrimination” meaning discrimination based on any characteristic which bears no relationship to a person’s ability to be a good tenant (source). For example, the California Supreme Court in Harris v. Capital Growth Investors XIV (1991) wrote:

Despite the listing of specific types of discrimination in the statute, we concluded that the Unruh Act prohibited all “arbitrary discrimination by a business enterprise” and that the listing was “illustrative rather than restrictive” of the kinds of discrimination prohibited by the Act…. We qualified our conclusion by stating that businesses subject to the Unruh Act retained the right to “establish reasonable regulations that are rationally related to the services performed and facilities provided.”

While “arbitrary discrimination” (if it can even be defined) is probably illegal, we have not found a single case where a court ruled against a plaintiff for discrimination based on any characteristic other than California’s twelve prohibited characteristics (see §1.4).
We suppose that in the extremely unlikely event that Mrs. Murphy were to be sued for discriminating against prospective tenants adhering to left-wing political views, that she could provide a plausible reason to justify why her discrimination was not arbitrary (for example, “my last four tenants were all Democrats and we argued incessantly”).

Of course any arbitrary characteristic which served as a proxy for discrimination on a prohibited basis would likewise be illegal. For example, if Mrs. Murphy’s advertisement had stated “Must speak Spanish fluently,” this could be construed as discriminatory because it would seem to show a preference for tenants with a Latin American ancestry.

**WARNING:** Although we believe it is legal to discriminate on any basis that is not arbitrary and not one of California’s twelve prohibited characteristics, we recommend that you not risk offending anyone with what others might believe is an arbitrary form of discrimination. Fair Housing counsels read housing ads and are empowered to sue any housing provider they believe has advertised in an illegally discriminatory manner (see note for question #16 to read about a sorry case in point).

### 9. 2.3.3.2: Reasonable Accommodation

Walter manages Gloria’s apartment building. Gloria has multiple chemical sensitivity syndrome (MCS) – an affliction unfamiliar to Walter. To accommodate her disability, Gloria requests Walter to: (1) Repaint her apartment using hypoallergenic paint, (2) Clean her air ducts, (3) Refrain from using pesticides near her apartment, and (4) Contact her only by telephone because she is also allergic to Walter. Before considering whether to make these reasonable accommodations, Walter may ask her for proof MCS is a medically recognized disease and that she suffers from it.

**True** Assuming that Walter has never heard of MCS, he may “request reliable disability-related information” to verify that Gloria’s affliction meets the Act’s definition of a disability (see note #1) and that the accommodations she requests will reduce the burden of her disability.

**Citation:** Question: If a disability is not obvious [Gloria’s disability is not], what kinds of information may a housing provider request in support of a requested accommodation? 

**Answer:** A housing provider may not ordinarily inquire as to the nature and severity of an individual’s disability. However, in response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act’s definition of disability …, (2) describes the needed accommodation, and (3) shows the relationship between the … disability and the need for the … accommodation.

**Note #1:** The statutory definition of a disability is given in §1.4 as defined by federal law, a handicap is a physical or mental impairment which substantially (California law omits “substantially”) limits one or more of a person’s major life activities, or a record of having such an impairment, or one regarded as having such an impairment.

**Note #2:** The Wikipedia article about MCS says: “MCS is a controversial diagnosis and is not recognized as an organic, chemical-caused illness by the American Medical Association” but according to another article (from a good authority), HUD recognizes MCS as a legitimate disease.

### 10. 2.4: California Laws

**In California, HUD investigates most fair housing complaints.**

**False** In California, the Department of Fair Employment and Housing (DFEH) investigates nearly all fair housing complaints.

**Citation #1:** HUD refers nearly all fair housing complaints to the DFEH.

**Citation #2** from §2.1: In California, HUD has delegated its enforcement of the fair housing laws to the DEFH since California fair housing laws are substantially equivalent to the federal fair housing laws.
11.  2.4.3: Fair Employment and Housing

When proposed in 1964, CAR® opposed the Rumford Act – California’s first fair housing law.

**True** – believe it or not. The California Real Estate Association (now the CAR®) led an effort to repeal the Rumford Act. This effort resulted in Proposition 14. This initiative proposed a constitutional amendment which in effect would have nullified all housing acts – especially the Rumford Act – and would have spelled out in the [State] Constitution the unrestricted freedom of owners to sell their properties to whomever they pleased.

**Note #1:** In 1964, the California Real Estate Association (now CAR®) sponsored an initiative to counteract the Rumford Act which read:

*Neither the State nor any subdivision or agency thereof shall deny, limit or abridge, directly or indirectly, the right of any person, who is willing or desires to sell, lease or rent any part or all of his real property, to decline to sell, lease or rent such property to such person or persons as he, in his absolute discretion, chooses* (source).

**Note #2:** In 1949, owing to the overt racism of industry groups such as the California Real Estate Association (now CAR®), African-American real estate agents formed their own professional association out of a need to secure the right to equal housing opportunities; that group was and is the National Association of Real Estate Brokers. Its members call themselves Realtists®.

12.  2.4.5: AIDS Disclosure Exception

The recent death of any former occupant is considered “legally immaterial” and, therefore, must not be disclosed to potential buyers.

**False** Although California law requires that licensees disclose any death which occurred on a property three years or less before lease or sale, it makes an exception for a death caused by AIDS (CC §1710.2). The disclosure of deaths from AIDS is optional.

**Comment:** Readers who were not following the initial stage of the AIDS epidemic when it occurred in the 1980’s, may not know that at that time much of public did not understand how AIDS was transmitted. Many believed it could be transmitted via long-lived viral agents shed by persons infected with AIDS. When lawmakers became convinced that AIDS could only be transmitted via blood-to-blood contact, they amended CC §1710.2 to provide brokers an exemption to the requirement that they disclose any death which occurred in a home three years prior to the date of its listing. The exemption was justified on the grounds that it was in the public interest to not perpetuate the myth that AIDS was transmitted by means other than intimate blood-to-blood contact.
### 13. 3.2.1.3: What Creditors May Ask

Suppose you are a mortgage lender and you have only enough money to fund one of the loans requested by these two qualified applicants. Both applicants have requested a 30-year mortgage and both have identical underwriting scores. The only significant difference between them is that one has a fixed income. How should you choose between them?

(A) Flip a coin.
(B) Choose the one most likely to live the longest.
(C) Choose the one who is not on a fixed income.

**A** Since you are not a lender, you probably noticed the age difference between the two applicants. Because you are not a lender, you might believe the better risk would be the younger of the two since the actuarial fact is that a man in his eighties is likely to default well before the end of the loan’s 30-year term owing to his death, illness, or disability. Moreover, because you are not a lender, you might believe that because the older applicant lives on a fixed-income, he is more likely to default should the purchasing power of his income be eroded by inflation and he thus finds it necessary to divert the income he would have otherwise paid to service his mortgage loan to instead pay for products and services even more necessary than housing (e.g., food and pharmaceuticals).

Now if you were truly a lender, you would be blind to their differences in age and source of income as both attributes are protected classes which the law forbids you to take into consideration when making a funding decision. Therefore, the only way rational way to choose between them would be to flip of a coin.

**Citation:** A creditor may only ask an applicant if he is over 18. ¶ A creditor who uses a credit-scoring system may include the applicant’s age if the applicant is 62 or over only to favor the applicant’s score. ¶ A creditor may consider age to determine how long the applicant might continue to work and at what level of income. ¶ Age alone cannot prevent someone from qualifying even when an applicant’s life expectancy is considerably less than the term of the mortgage. A lender may not even deny a 30-year mortgage to an applicant because he is a centenarian.

### 14. 3.2.1.4: Creditor Notifications

A creditor must respond to an applicant within 30 days of his application.

**True** Within 30 days after an application is completed, the creditor must notify the applicant whether or not credit has been approved. If the application is denied, the creditor must provide: (1) a statement of the applicant’s rights under ECOA, 2) the name and address of the federal agency enforcing ECOA compliance, and 3) a disclosure of the applicant’s right to know the reasons for his denial.

### 15. 4.1: General Recommendations

**HUD empowers private fair housing organizations to sue fair housing violators and retain settlements or court-awarded damages for their own use.**

**True** Private fair housing agencies authorized by HUD are empowered to perform private enforcement activities. Under this authority, these agencies may sue fair housing violators and retain out-of-court settlements or court-awarded damages for their own use. According to MJ Borelli, executive director of the Fair Housing Council of Central California, any money collected or awarded to a Council is used to affirmatively further fair housing.”
16. **4.2: Avoiding Discriminatory Advertising**

An assisted living facility advertises “glatt kosher communal dining with on-site Shabbat services.” This wording is in violation of the FHA.

**False** Yes, the ad describes services which only observant Jews are likely to value BUT the ad does not specify a preference for Jews. If it had read “*Perfect for the Chosen People, we offer glatt kosher …*” then it would have suggested a preference for The Chosen People (i.e., Jews) and would therefore be illegal.

**Citation:** On the other hand, based on HUD’s belief that descriptions of properties and services are generally permitted, the agency has determined that ads containing such descriptions as “chapel on the grounds” and “kosher meals available” do not on their face state a preference for persons likely to make use of those facilities so as to violate the FHA. … ¶ In addition to the “reasonable person” standard, you should also consider the following rule of thumb when advertising the sale or rental of a dwelling: **DESCRIBE THE PROPERTY, NOT THE PERSON.**

**Note:** HUD pays fair housing organizations to scour ads looking for discriminatory ads not unlike the contrived one used in this question. For example, Dan Bader of Orange County was fined by $4,000 by the Fair Housing Council of Orange County when he ran an ad to rent a room he advertised as “*perfect for one 1 or 2 professionals.*” He told the author, in a private email, that his effort to contest the fine cost him tens of thousands of dollars in attorney fees, diverted hundreds of hours of his time, and ultimately resulted in the loss of his business (he became obsessed with righting what he believed was an injustice). Click here to learn more.