

Your personal identification number goes here _____

PROPERTY FINAL EXAMINATION

PROF. GREG R. VETTER

SPRING, 2004

May 7, 2004

1:00 p.m. to 5:00 p.m.

Greg R. Vetter
University of Houston Law Center
Office: (713) 743-3596
Cell: (713) 213-0360
gvetter@uh.edu

Administrative Assistant:

Ms. Beverly Ward
Office: (713) 743-2128
bward@central.uh.edu

**DOCTRINE-APPLICATION QUESTION(S)
AND POLICY QUESTION(S)**

Examination Serial Number:

XXX

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I. EXAM INSTRUCTIONS

A. *Instructions Applicable to the Administration of My Exams*

1. *Conventions*

By convention, these instructions use the word “examination” to refer to this document. The word “exam” refers to the event of taking this test, as in “exam room” “exam taker” or “exam time.”

2. *Identification*

Identify yourself only by your personal identification number as set forth below. Do not identify yourself in any other fashion.

If you are an L.L.M. student, write “LLM” after your personal identification number.

a. Bluebook Exam Takers

- (i) write your personal identification number on the cover of *each* of your bluebooks; and
- (ii) write your personal identification number on the top right-hand corner of the cover page of this examination and on *the last* page of the examination problem itself.

In addition, write the examination serial number given on the cover page of this examination on the cover of *each* of your bluebooks.

GENERALLY APPLICABLE EXAM INSTRUCTIONS

b. Typing Exam Takers

- (i) type your personal identification number in a prominent place on the first page of the typed answer; and
- (ii) write your personal identification number on the top right-hand corner of the cover page of this examination and on *the last* page of the examination problem itself.

In addition, type the examination serial number given on the cover page of this examination in a prominent place on the first page of the typed answer.

3. *Prohibited actions: copying, reproducing, or memorializing this examination; or taking this examination from the exam room*

I have not determined whether I will make this final examination available to students in the future. Accordingly, I am prohibiting this examination from release. It is an honor code violation to take any action designed or intended to cause all or any portion of this examination to be released. ***Copying, reproducing, or memorializing this examination or any of its contents in any form or fashion will be treated as a violation of the Honor Code and will be penalized accordingly. Taking notes about any portion of this examination is expressly prohibited under this rule.***

4. *Hand-Writing Your Answer*

Write legibly. I cannot grade what I cannot read. Skip every other line and write only on the right side of the page (i.e., skip every other page). You are only permitted to submit what you have written in the exam room during the exam time. Previously-drafted attachments of any sort may not be submitted for grading.

Number your bluebooks consecutively on the outside cover of the bluebook, i.e., “1” for the first bluebook, “2” for the second, and so on.

5. *Typing Your Answer*

You are permitted to type your answer to the examination. If allowed by the capabilities of the exam taking software, double space your answer. Also, type only on one side of the page. You may not use the memory capabilities of your typewriter or computer in any manner.

For students typing their answer on a computer, the student is responsible for compliance with the various technical requirements and mechanics for using the exam taking software, Examsft. In particular, the student is presumed to be on notice of all information available under the links at the web page(s) maintained by the Law Center’s information technology department related to use of the exam taking software. Please realize that I am not undertaking any action to be in a position to provide any assistance with the exam taking software.

6. *Materials Allowed*

This is an “open materials” exam. You may use class notes or outlines (prepared by yourself or others), commercial outlines, and other similar materials. You may not communicate or collaborate with anyone during the exam about the examination or obtain direct or indirect information or assistance from any person; except for questions to the professor in the case of a severe discrepancy, defect, issue or similar problem with the examination. You may not receive any assistance from any live or electronic

GENERALLY APPLICABLE EXAM INSTRUCTIONS

retrieval/computer source during the exam. You may not do any library research or access the internet once the exam has begun.

Students writing the exam by hand are not allowed to use their computers for any purpose during the exam. Students typing the exam using the Law Center's sponsored exam-taking software may only use their computers to run such software.

7. *Collection of Examinations and Materials – Via 8.5 x 11 Inch Envelopes*

The examinations, bluebooks, and scratch paper will be collected at the end of the designated time. ***You will not receive a grade in the class unless you turn in:***

- (i) your entire examination with your personal identification number written on the top right-hand corner of the pages indicated above;
- (ii) your bluebooks with your personal identification number and examination serial number written on the cover of each bluebook, ***or*** your typed answer with personal identification number and examination serial number typed in a prominent place on the first page of the typed answer; and
- (iii) ALL scratch paper that you have used.

Scratch paper will neither be read nor graded. Nevertheless, you must turn in ALL of your scratch paper at the completion of the exam. You MAY NOT leave the exam room with any scratch paper that you used. You may mark on the examination itself.

I will provide 8.5 x 11 inch envelopes for exam takers. Use the envelope to turn in ALL your materials, including all of the examination, your answer, and any scratch paper.

a. Those Hand-Writing their Answer

Assemble your materials for collection by ordering your bluebooks sequentially, then place all scrap paper or other materials and the examination beneath the bluebooks. Place this stack inside the 8.5 x 11 inch envelope. Close the envelope with the metal clasp, but do not wet the adhesive. ***Write your personal identification number on the outside of the 8.5 x 11 inch envelope.***

b. Those Typing their Answer

Place all scrap paper, the examination, and the floppy disk inside the 8.5 x 11 inch envelope. Close the envelope with the metal clasp, but do not wet the adhesive. ***Write your personal identification number on the outside of the 8.5 x 11 inch envelope.***

c. I Perform a Post-Exam Inventory of the 8.5 x 11 Inch Envelope's Contents

As soon as practically possible after collecting the examinations, I cause administrative assistants to perform an extensive inventory process to ensure that all original examinations have been returned. If you discover that you have inadvertently kept some materials contrary to these instructions, get in touch with my administrative assistant immediately. Do not contact me personally because that creates the possibility of you losing your anonymity.

On the flip side, if in the inventory process we discover that a particular exam taker did not turn in the examination or some portion of it, this creates a potentially grave situation, especially if we cannot communicate with you to inquire about the situation. My administrative assistant would attempt to get in

GENERALLY APPLICABLE EXAM INSTRUCTIONS

touch with you in this instance. Thus, it is important to pay attention to your regular communication channels even though you may be undertaking other exam preparation.

8. *Restroom*

You may leave the exam room to visit the restroom. If you leave the exam room, you must leave your examination, any scrap paper, and your bluebooks with the proctor. If the proctor is not present, you must leave your examination, any scrap paper, and your bluebooks on the desk at the front of the room. You may not discuss the examination with anyone or consult any materials while you are out of the exam room.

If you leave the exam room, you must exercise a very high standard of care in exiting and entering the room in order to minimize disruption and noise that will distract other students.

9. *Makeup Exams*

Because certain members of the class may be taking a makeup exam, it is a violation of the Honor Code to discuss this examination with any class member who has not yet taken it. Do not discuss this examination with any students not in this class until after the makeup exam period is over. Do not discuss this examination with any student in the class without first asking such student whether he or she has taken the exam. Abide by the Honor Code in this and in all other particulars.

10. *Compliance*

Failure to follow any of the directions provided with this examination will result in such penalty as I deem appropriate to the nature and degree of the violation. ***The spirit of these instructions will be enforced as well as their letter.***

11. *Pledge*

In placing your personal identification number on your bluebook covers or typed answer, and on the examination pages, and by writing and turning in an answer to this examination, you are pledging that you have not received or given any unauthorized aid in preparing for or taking this examination or violated any of the instructions given here. Such behavior is grounds for the imposition of a variety of sanctions, including expulsion from law school.

GENERALLY APPLICABLE EXAM INSTRUCTIONS

B. Instructions Generally Applicable to Writing Answers for My Examinations

1. Materials Needed

To take this examination, you may/will need a copy of the assigned casebook and any supplement. Bluebook exam takers will also need a pen and bluebooks.

Computer software typing exam takers should also have bluebooks and writing instruments as a backup mechanism in the case of technical difficulty.

2. Applicable Law

The law applicable to this examination is the law covered in this class from: the assigned reading from the casebook and any assigned supplement, and additional law (if any) provided in the class overheads (collectively, the “Materials”). In my upper level Intellectual Property classes the Materials also include the primary statutory, regulatory, or treaty-based provisions relating to the assigned reading materials. Be sure to answer all questions on the basis of the law provided in the Materials.

There are some situations where the Materials provide alternative rules or tests for resolving a specific legal issue. In these instances, the “majority” rule is the rule or test relied on by the majority in a primary case in the casebook/supplement. Any other different tests or rules, (which could be multiple) whether mentioned by the majority opinion, offered in a dissent, described in the notes to the case, or given in the overheads, are alternative or “minority” rules. This instruction does not necessarily mean that issues exist in this examination requiring the application of alternative or minority rules. And, it may or may not be necessary to analyze any or all such alternative or minority rules depending on the specific examination instructions and/or the facts provided.

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C. Instructions Specific to this Particular Exam

1. Structure

The final examination is designed to be four (4) hours in length. It consists of three sections, each of which presents an independent problem, issue(s), or opportunity to earn points. Each section has a particular unique focus, and is worth a different amount of the total points available on the examination. The point weights are given in the table of contents above, and in the table below.

All multiple choice questions are worth an equal number of points.

On this examination, including the multiple choice questions: (i) the common law “*Rules Furthering Marketability by Destroying Contingent Future Interests*” apply unless the question states otherwise; (ii) unless otherwise indicated, grantors own fee simple, transactions are regular and satisfy applicable formalities, named parties are alive and competent, and limitations periods have not run; and (iii) assume that any facts related about actual persons, entities, places, things, etc., are actually true, even if you know them to be questionable or false.

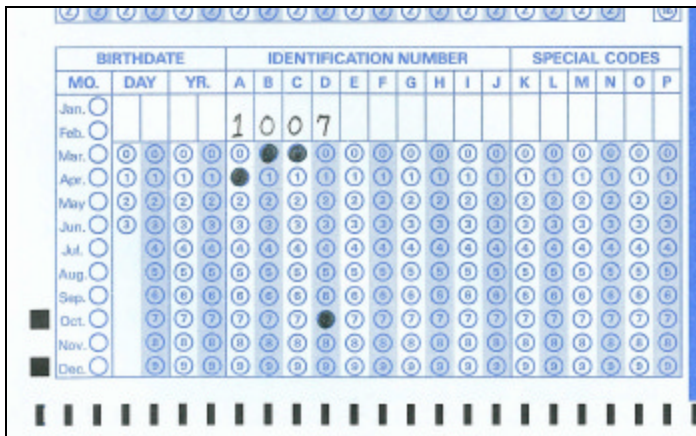
2. *Suggested Time Allocation and Other Exam Metrics*

Given the point percentages for the three sections disclosed above, one logical division of time in a four hour (4) examination is as follows.

Section	% of Points	Time (h:mm)	Comments
Multiple-Choice	50%	2:00	There are 47 multiple choice questions, allowing for a student to earn no more than 45 correct answers. Thus, each question is worth approximately 1.1% of the examination total. ¹ Working all 47 questions in 2 hours amounts to spending 2:33 on each question.
Doctrine-Application	35%	1:24	This section is just under three (3) pages.
Policy Analysis	15%	0:36	This section is just under one (1) page.

3. *“ScanTron” Answer Sheet – Multiple Choice Questions*

Do not identify yourself in any way on the answer sheet, except by writing-in and darkening-in your personal identification number. For example:



Otherwise, enter one and only one answer selection for each numbered multiple choice question in the corresponding numbered item on the answer sheet.

4. *BlueBook Use – Doctrine-Application and Policy Analysis*

Start a new bluebook before beginning your analysis of each major area or logical subdivision. This means that you should use a new BlueBook (or, if typing and allowed by the exam taking software, use its mechanisms to create a page break, such as by starting a new electronic “Question”) before your analysis of each section.

Remember to put your personal identification number on the cover of each bluebook.

¹ Fifty percent (50%) against 45 questions amounts to 1.11% per question, but fifty percent (50%) against 47 questions amounts to 1.06% per question.

5. *Read the Assignment Section in Advance*

It is ***highly recommended*** that you read the “Assignment” section (below) first, before reading the other sections of the examination, and before you begin. The “Assignment” section is one of the many portions of the examination made available before the exam date via the class final exam web page.

6. *Starting and Stopping the Exam*

The examination sections containing the Doctrine-Application and Policy Analysis questions, excluding the multiple choice questions, are in this document in pages numbered one (1) through four (4).

The examination section containing the multiple choice questions is in a different document, in pages numbered one (1) through twenty-four (24). This sounds long, but there is a lot of white space on each page.

Both documents should have the same examination serial number on their respective cover pages. Please check this now.

Without looking at the content of the examination sections, please count your pages now to ensure that your examination is complete. If not, notify the proctor immediately.

A proctor will provide “warning” that the end of the exam period is approaching by writing on the board in the exam room(s) the amount of time remaining at approximately the five minute mark.

When time is called, stop writing or typing immediately.

DO NOT TURN THE PAGE UNTIL YOU ARE INSTRUCTED TO DO SO.

II. MULTIPLE CHOICE QUESTIONS SECTION (50%) {IN A SEPARATE DOCUMENT}

This section is intentionally left blank. These questions are provided in a separate document.

III. DOCTRINE-APPLICATION “IRAC” SECTION (35%)

In January of 1990, Oliver conveys KrostAcre as follows: “to Andy for life, then to Becky and her heirs, but if any of Clarence’s children should reach the age of twenty-three (23), to the first such child upon reaching said age.”

Andy lives far away and has no use for KrostAcre, so he leases it as follows: “to Darren for two (2) years beginning on January 1, 1991.” Darren takes possession on January 1, 1991 and operates a vaudeville act for several months. Then Darren decides to travel full-time as a professional water-skier on the international circuit, so he sells the vaudeville business to Edward. On April 1, 1991, Darren, Andy and Edward sign a short document. The only substantive language in the document is as follows.

Darren hereby subleases, transfers and assigns to Edward his leasehold interest in KrostAcre for a period of twenty (20) months from the date of signing this document. Andy hereby approves of this action.

Andy received all rents due in 1991, but beginning in January 1992, the rent payments did not arrive for the remainder of the lease. Unfortunately, Andy dies in March of 1993. At that time, Darren still has not returned from the international water-ski circuit.

Becky takes possession of KrostAcre in May of 1993. KrostAcre has a rectangular shape, 1000 meters running north-south, 500 meters running east-west, is very flat, and has historically been used for farming. It is surrounded by other farms. In the southwest corner is a building with a surrounding parking lot, in total occupying a 100 by 100 meter square. Becky uses the building to grow pimentos with an innovative, indoor-farming process, but her operations never stray beyond the building and its parking lot.

In June 1993, Zack uses a fraudulent deed to convey KrostAcre to Frank, who thinks the deed is valid. The deed describes the entire 1000 by 500 meter expanse of KrostAcre. That same month, Frank builds a modest house in the northeast corner of KrostAcre. He lives in the house and begins growing pimentos using a traditional outdoor farming process on the northern 700 acres, using the full 500 meter east-west “width.” Frank’s farm tractors are old, so they are

very noisy and they blow big clouds of black smoke high into the sky when he drives them all over his pimento fields. Frank falls into ill health in August of 1995. He then sells KrostAcre to Gerald,¹ who takes over Frank's pimento operation and continues it as before, old tractors and all, farming the land up to the present time. Through the years, both Frank and Gerald have had to chase away local youths who sneak into the pimento fields and help themselves to some crop. On a few occasions they have even had to shoo away some of Becky's employees. Occasionally, every couple of years, Becky would look out the window of her office in the building and mutter: "I need to get that noisy, smoky, low-tech pimento hillbilly off my land." She was always too busy, however, to act on her mutterings.

Clarence's only child is Harry, who turned twenty-three (23) in January 2004. Clarence has just died in the last week of April 2004, and Harry is reviewing his deceased father's papers. He comes across the conveyance of KrostAcre and is elated with what he sees.

Andy's estate cannot get jurisdiction over Darren so it sues Edward. Harry sues Betty for KrostAcre. Gerald learns of the suit, and the court allows him to add a claim for KrostAcre.² Analyze according to the guidance in section V.2, "Doctrine-Application "IRAC" Analysis" below, keeping in mind the guidance in section I.B.2, "Applicable Law" above.

While water-skiing all over the world, Darren monitors the government surplus property listings in many far-away countries. These listings are only available in paper-book format in each country's capital.³ He establishes a company in the state of New York, in the U.S. Darren relays the listings to his company, who publishes a newsletter marketed to the salvage property market. Because of the extremely low-priced property available, typically within about a day Darren's subscribers have purchased all property listed in his newsletter. Darren's company

¹ Relying on the deed he got from Zach, Frank prepares a deed describing all of KrostAcre and conveying it to Gerald.

² For all suits posited, assume that any applicable statute of limitations has not run on any party's cause(s) of action. Also assume that the law of the jurisdiction allows Andy's estate to bring or defend any claims Andy could have so made or defended during his life. In the jurisdiction where KrostAcre is located, the statutory period to bring an ejectment action for trespass is ten (10) years. Also assume that there are no procedural problems with the court adjudicating all claimants' rights to KrostAcre.

³ It is indisputable that these listings are not the proper subject matter of copyright protection in any jurisdiction.

allows many New York libraries to subscribe to the newsletter. In fact, he puts the libraries first on his distribution schedule. A large competing newsletter company, GreatSalvageBuys (“GSB”), has nationwide presence in the salvage newsletter market, and has very good distribution and printing capabilities. But, they have no one like Darren scouring the world’s surplus property listings. GSB sends representatives to the New York libraries every day. Within two hours after the library receives Darren’s newsletter, GSB has Darren’s listings in its newsletters all over the country.

Darren also owns some land on a lake in the U.S. where he used to water-ski. The lake shore is a straight line, running east-west, with the land to the north, and the water to the south. Darren’s land is a square parcel on the north shore. A county road runs along the east side of Darren’s land down to the water. Directing the contractors from his international travels, he installs a pipe underground and pumps water from the lake to the north end of his land to serve a garden. A few years later, Darren’s friend Janet implores him to sell her the north half of his land. Knowing Janet loves to garden, Darren sells his friend the land. She builds a house and connects her house to the county water line running along the county road. Darren’s deed to Janet does not mention the pipe. Janet continues the garden, and continues to operate the pump, which is located on the land she purchased. Janet sells produce from her garden to earn a living. The garden needs a lot of water, so it is most economical to pump it from the lake.

Unfortunately, Darren died a month ago in a world-record water-ski jump. His estate discovers the pipe under Darren’s land and wants to clear any legal obstacles to removing it.

Darren’s company sues GSB and his estate sues Janet.⁴ Analyze according to the guidance in section V.2, “Doctrine-Application “IRAC” Analysis” below, keeping in mind the guidance in section I.B.2, “Applicable Law” above.

⁴ For all suits posited, assume that any applicable statute of limitations has not run on any party’s cause(s) of action. Also assume that the law of the jurisdiction allows Darren’s estate to bring or defend any claims Darren could have so made or defended during his life.

IV. POLICY ANALYSIS SECTION (15%)

Paul works for Jessie Helmet, a U.S. Senator. Helmet recently read a staff summary of a law review article advocating the following measures to solve the problem of email “spam.”⁵

(i) Add to the communications protocols and email systems the ability for every user to require a payment from others to send a message to the user’s email in-box. In other words, implement a partial right to exclude from email in-boxes, where the partial right to exclude is expressed by a price. Users decide whether to opt into the system or not, but the price is uniformly set at the same level for all users by the technology. The price is set at a low level to be almost negligible, or at least very affordable, for normal levels of email traffic.

(ii) Make the email system keep accounts for all senders/receivers such that people who regularly email each other will have their accounts mostly “balance out.”

Helmet asks Paul to write an analysis looking at the policy facets of this proposal. Helmet is worried about an opt-in system, and wonders whether it should be mandated.

Write Paul’s analysis. What are the potential arguments that might be used against the proposal? What are the proposal’s benefits? Critique from a policy perspective the proposal using concepts from our class Materials and discussion. Would you endorse this proposal, reject it, or implement it in altered form? Why? If you would implement an alteration, how would you alter the proposal? Why?⁶

⁵ The article defined “spam” as the overuse of a common “resource,” namely all world-wide email “in-boxes,” taken in aggregate, with the “resource” including the communication facilities to connect all “in-boxes.” Overuse was “sending emails for electronic mass marketing in such volume as to crowd-out communication capacity for, or users’ attention for, other legitimate traffic.” Spam does not include the problem of viruses, “worms,” or other malicious communications disruption, but only the problem of said electronic mass marketing.

⁶ Your answer does not necessarily need to be organized around these questions on a question-by-question basis. It may be better to organize your answer in a larger framework and use these questions to guide the discussion.

V. THE ASSIGNMENT

Write an analysis for each of the issue(s) raised by the facts or information enumerated in the examination. At the end of each section or subsection the focus or “call” of the question is given in a short paragraph enclosed in a rectangle.

Organize your written answer logically by the sections or subsections of the examination. Your written answer does not need a general introduction. Proceed immediately to analyzing the issues, problems or questions.

The sections vary in the degree to which they suggest incorporating policy analysis. One section, IV, overtly suggests policy analysis. Another, the second, explicitly suggests traditional IRAC analysis: Issue, Rule, Application and Conclusion. The multiple choice question section has little to no policy analysis. Its questions have broad coverage and tend to be primarily informational, although some of them cover problems similar to the problems worked in class.

1. *Multiple Choice Questions*

The first section is merely a placeholder for the separate Multiple Choice Question document.

2. *Doctrine-Application “IRAC” Analysis*

The analysis in this section should communicate the following as briefly as possible based on the facts available and the law, principles and policy discussed in class and from the course Materials: (i) discuss the arguments, positions or rights that should be asserted, or have been asserted,¹ by the parties; (ii) evaluate the arguments and substantive merits from each party’s perspective, articulating defenses and counter-arguments each should/might assert; (iii) assess the strength of each party’s arguments; and (iv) determine for each issue who is likely to prevail and explain why. Your written answer, however, should not be organized according to these four points.

Rather, for each issue, your analysis should communicate the issue, and then state/apply the law (element by element) to the issue’s facts (applying counterarguments as well), and then conclude on the issue.

An exception to this is that there is no need to restate a legal test that has already been stated; simply refer to the previous statement of the rule. For example, if there is a second adverse possession issue, and you have already related the elements for adverse possession for an earlier issue, you can abbreviate your analysis by directly applying the law to the facts and concluding. Another way to say this is that if a second issue arises where there is a need to apply a legal test already related and discussed, you may analyze the second issue by exception, i.e., discussing the differences in application and outcome.

¹ The examination question in certain sections may be written in such a way that certain issues are clearly “in” the problem or case/dispute because they have been articulated or strongly suggested by the facts. You should analyze these issues, but there may be other issues to be analyzed as well that are not yet asserted by any party. In addition, the examination question in these sections may also indicate that certain other possible issues are “out” and not to be analyzed because a party or parties disclaim certain issues or protections.

If you believe that there are any additional critical yet unsupplied facts that would materially impact the outcome of a particular issue, you should note what such facts would be. In such case, *briefly* describe how such critical facts might impact the outcome, i.e., indicate *at most one and only one* differing result that would ensue from different reasonable factual assumptions about such unsupplied facts.²

3. “Policy” Analysis

The policy oriented section is designed to allow one to employ some of the various policy arguments that arose during the class. A productive organization of the policy analysis depends on the context of the problems, disputes or questions posed in the policy-oriented section.

Application and deployment of arguments is the emphasis of the “policy” section. Some may view the question(s) in the “policy” section as having two “sides” along political or other ideological lines. Even assuming this perspective (without prescribing to it), however, an answer does not earn points by picking the “right” or “best” side of the issue, but rather by effectively marshalling arguments for the two (or many) facets of the issue. The most effective way to earn points on the policy section is to apply policy arguments arising from the course Materials.

The “policy” section, however, is not completely divorced from the doctrine studied in class. Question(s) in the “policy” section may require the application of, or recognition of, the doctrine studied in class to specific fact patterns.

² Please note that if you find yourself discussing alternative outcomes for supposedly critical yet unsupplied facts for every issue you analyze, you are probably engaging in too much analysis of such alternative outcomes.

Your personal identification number goes here _____

PROPERTY FINAL EXAMINATION

PROF. GREG R. VETTER

SPRING, 2004

May 7, 2004

1:00 p.m. to 5:00 p.m.

Greg R. Vetter
University of Houston Law Center
Office: (713) 743-3596
Cell: (713) 213-0360
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Administrative Assistant:

Ms. Beverly Ward
Office: (713) 743-2128
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MULTIPLE CHOICE QUESTIONS

Examination Serial Number:

XXX