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- I. Answer the specific questions which appear after the following statement of facts.

Early one morning D's house in State X was observed to be afire and the fire department was called. Upon entering the house in fighting the fire, the firemen discovered the body of D's wife, badly burned, but with a recognizable slash-like wound on her temple. Later the same day a fire marshal and the police entered the house without warrant of any kind to conduct an investigation which they hoped would explain the cause of the fire. As a result of the investigation, a tire iron was seen near the place where D's wife's body was found which had traces of what appeared to be blood on it. This was taken by the police.

Meanwhile, D, a doctor, was located at the local hospital where he was making his rounds and was informed of the tragedy. He appeared quite shocked but in answer to friends' questions as to where he had been when the fire broke out, stated that he'd gone to a medical convention in a nearby town the day before and had stayed overnight, returning home just in time to commence his rounds. D then proceeded to have the body of his wife cremated, and took her ashes to her home in State Y for disposal.

While D was in Y, a neighbor of D's informed the police that D's car was seen at his home shortly before the fire was reported. Thereupon the police secured an arrest warrant. D waived extradition and was returned to X. On the way back, D attempted to commit suicide by jumping from the car in which he was being transported, but was only cut and bruised. Nonetheless he was hospitalized upon arrival and given a sedative. Shortly thereafter, D announced he had a statement to make. The police went to the hospital and there D, after the officers had asked him three or four times to "help clear this matter up" admitted sneaking into town in the early morning, hitting his wife with the tire iron and setting fire to the house. But when the officers asked why he did it, D just stared at them. The prosecutor gave this confession to the newspapers, but only in general outline.

When D's case was placed on the docket for trial he filed a motion alleging that he was mentally incapacitated to stand trial. This motion was overruled, after hearing and after D had been observed by psychiatrists, and the case proceeded to trial. At trial the state introduced, among other things, the tire iron and the confession into evidence over D's objections.

On behalf of D evidence was introduced by a psychiatrist that D was a nervous person, highly intelligent and suffering from a schizoid personality. The State attempted to counter this evidence by having the sheriff testify that D had done nothing in jail that could be considered unusual or abnormal, by evidence from neighbors that D and his wife were constantly quarreling and that, in their presence, D had threatened to kill her, and by evidence that the medical convention D was supposed to be attending the day before the fire was never held, but that D had stayed overnight in a motel, drinking and taking tranquilizers until he suddenly left, drove home, hit his wife and set the house afire. Thereupon D moved for a directed verdict of acquittal.

1. Assuming the jurisdiction is without precedent and that you are the prosecutor, what rules pertaining to criminal responsibility will you urge the court to adopt in its instructions to the jury? Why?
2. Same assumption and same question, except that you are counsel for D.
3. Assume the rule you urge as prosecutor is more likely to result in conviction than the one D urges. Will you nevertheless urge it?
4. Did the court err in overruling D's objections to admission of the tire iron and confession into evidence? Why?
5. Should the court have granted D's motion for a directed verdict of acquittal? Why?
6. What dilemma should the prosecutor have resolved before announcing D's confession to the newspapers?
7. Assume the court denies D's motion for a directed verdict of acquittal, that the jury returns a verdict of guilty and that it is then discretionary with the court to sentence D either to death or to imprisonment for life. What sentence should the court impose? Why?
8. Describe the procedure and allocations of burden of proof generally operative on D's pretrial motion relative to his incompetency to stand trial.

9. Suppose D's pretrial motion had resulted in a finding of incompetency, that he was thereafter committed to a mental hospital until such time as he was found competent, that five years later the superintendent of the hospital announced D was competent to stand trial but nonetheless "insane." Suppose, further, D appears for trial and announces his intention to plead guilty, that the court refuses to accept the plea and recommit D to the mental institution. You are D's attorney. Can you get him out of the institution? How and Why?

II. Discuss fully each issue contained in each of the following questions whether or not any one issue is decisive of the question.

A.) D is a professional photographer. The police have, on the basis of rumors, heard that D has been known to make movies of pornographic situations and show them at stag parties. On information received from an informer who, in past times has given reliable information, the police learn D is going to show pornographic films to C, a men's club. Thereupon the police put D under surveillance. He is observed on a number of occasions leaving his home with circular metal objects, similar to cans in which motion picture films are usually kept, under his arm and taking them to meetings which have the reputation of liking lurid entertainment. The police then secure a search warrant on the basis of an affidavit which states that, on information and belief, the police verily believe D is a producer of obscene films, that such information and belief is based on information supplied by a confidential informer who has always been a reliable source of information, and that, for the same reasons, the police have reason to believe D has such films stored on certain premises (the description of which premises is given with particularity, but which do not happen to be D's property, being, rather, the property of his friend, F.) F has given D a key to the premises and D is free to come and go as he likes. The subsequent search, conducted in D's absence discloses the presence of films which are, in fact, obscene. Meanwhile, on the same day at the same time, other police officers have observed D getting into his car with circular metal objects in his possession and have commenced tailing him. Within a few blocks the officers notice that D is doing 26 mph in a 25 mph zone, so stop and arrest him for speeding. While one officer wrote the ticket, another pulled up the rear seat of D's car where the circular cans are discovered. Both officers unwound the films part way, held them up to the light, observed they were, in fact, obscene, and so advised D he was under arrest for possession of obscene films, a felony under the state law. D was charged with unlawful possession of pornographic (obscene) films on two counts, growing from the search of F's premises and from the discovery in D's car. D made proper objection to introduction into evidence of both sets of films at all possible instances during all stages of the entire procedure, pretrial and trial, but his objections were overruled and he was found guilty on both counts. The sentence meted D was one year on each count, the sentences to run consecutively. D's motion to vacate sentence and for a new trial was overruled and he appealed. What result? Why?

B.) (This question may be answered on the basis of "general" law or of Virginia law. Please designate which basis you intend to use).

D is actually 15 years old, but tells everyone he is 18 and, because of his mature appearance, is believed. X has seen D leaving the broken door of a jewelry store with his arms full of wrist watches and has related this information to Y, a policeman. Y, knowing where D lives, forthwith goes to D's home and takes him into custody. Thereafter D was properly indicted for grand larceny and put on trial in criminal court. During the course of the trial, D's true age was established as a fact, but the court denied a motion to dismiss filed by D's lawyer and proceeded with the trial. The verdict was guilty, but because of D's age he was put on probation for five years pending good behavior. D's lawyer properly appealed the conviction and sentence. Thereafter, and while the appeal was pending, D was observed attempting to pry open the rear door of a grocery store at midnight when the store was closed. This fact was reported to the prosecutor who caused a warrant of arrest to be issued for D. by the court which had tried D. Upon execution of the warrant the court directed D be taken forthwith to prison to serve a term of five years. D's lawyer now brings habeas corpus. What result on the appeal? On the writ of habeas corpus? Why?

C.) In a state prosecution, D was arrested on the basis of suspicion of burglary after he was observed running through the backyards of a neighborhood in which a burglary had occurred and had been reported to the police. He was taken to the police station and immediately subjected to interrogation in spite of the fact that he asked to see a lawyer. Since, however, he was unable to tell the officers which lawyer of the local bar he wanted to see, the interrogation continued. After 10 minutes one officer falsely told D he might as well confess as a witness had already identified D as the man seen running from the burglarized premises. Thereupon D confessed and then was taken for fingerprinting. Then he was properly arraigned. D's confession contained information which allowed the

officers to find some of the items taken during the burglary, and D's fingerprints ^{were} found on those items and on the burglarized premises. On trial D objected to the introduction of the confession on the ground that it was obtained prior to arraignment and in the absence of counsel, and to the introduction into evidence of the contraband found. He did not, however, question the validity of his arrest and must be deemed to have waived any such objection. D is convicted and he appeals. What result? Why?