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Constitutional Law: Final Examination (June 3, 1967)

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DIRECTIONS: Discuss fully yet precisely each issue in the following questions whether or not you believe any one issue is conclusive of the problem.

I. P, motor carrier company, has a contract with two railroads to haul passengers and baggage between two railroad stations in D, city. D has enacted an ordinance making it unlawful to motor carriers to operate without obtaining a license. The ordinance also provides that to qualify for the license the motor carrier must pay a fee, hire only residents of D as drivers, maintain its principal place of business in D, file detailed financial reports and open books for inspection. The ordinance is enforced by fine and license revocation. P paid the required license fee into court simultaneously with an action to declare the ordinance constitutionally invalid as applied to P. D took no further action to enforce the ordinance and moved to dismiss the suit. What result? Why?

II. State X enacted a statute authorizing any magistrate to issue a search warrant, upon affidavit, to any peace officer authorizing him to seize any books, pamphlets or other printed or mimeographed material, pictures, recordings or tapes showing one is in possession, with intent to sell, of any obscene literature, picture, recording, etc. P, policeman, executed an affidavit stating that of his own personal knowledge D kept a supply of obscene books and pictures in his attic, that he kept them with the intent to sell them, and had on two certain occasions sold them to plainclothes policemen. Thereupon a magistrate issued a search warrant to D, describing D's premises with particularity and authorizing a seizure in the words of the statute. The premises were searched and a quantity of "hard core" pornographic pictures were seized along with books by Henry Miller, James Joyce, James M. Cain, John Cleland and Frank Harris. Subsequently D was tried on one count for possession of the pictures, the books being admitted into evidence as evidence of D's intent. D's objection to the pictures and the books as evidence was overruled, and conviction resulted. On appeal the State conceded error in the admission of the books into evidence, but maintained it was harmless error. What result on appeal? Why?

III. In 1960 D was convicted of murder and sentenced to life imprisonment. He was found at the scene of the crime with a knife in his hand later identified as the murder weapon. On the way to the police station he was seated between two burly officers who kept poking him in the kidneys with their elbows and asking D repeatedly, "Why did you do it?" Nothing else was said to him, and D remained silent. Later, at the police station, D noticed blood in his urine, and when the officers came again to question him, he said, "You don't need to ask me any more questions; I did it." This statement was used against D at trial. In the fall of 1966, D brought habeas corpus in federal court claiming his conviction was obtained in a manner depriving him of his rights under the Sixth and Fourteenth Amendments of the United States Constitution. Should the writ be granted? Why?

IV. D, a narcotics addict, was arrested for unlawful possession of opium, an offense under state law the penalty for which was one to ten years in prison. When the case came on for trial, however, the prosecutor entered nolle prosequi without stating a reason, but because he was not confident of his chief witness, an informer. D was thereupon released from custody on his own recognizance. Two years later, six terms of court having passed, the prosecutor (as state procedure permitted) again placed D's case on the trial docket. D's motion to dismiss was denied, the case was tried and D was convicted. Instead of sentencing D for unlawful possession, however, the Court treated D as an habitual offender under the state's Narcotic Offender Act. Here D could be treated as one dangerous to himself or to society and, should either finding be made, committed to a state hospital until deemed cured by the Superintendent of the hospital. The only proceedings undertaken were medical, psychiatric and social evaluation of D, reports of which were made to the court by letter. D, now having been in the hospital for six months, petitions for a writ of habeas corpus alleging he is detained in violation of his constitutional rights. Should the writ be granted? Why?

V. Having been arrested for burglary and having properly and clearly waived right to counsel after being clearly informed of all his constitutional rights, and having agreed to answer questions, D confessed after questioning officers falsely told him they had arranged for his six-year old son to see how he looked locked up in jail. At D's trial, he having pled not guilty, objecting to the confession because it was obtained in violation of his constitutional rights, the court after overruling the objection determined there was a question of fact to be resolved concerning the voluntariness of the confession, so instructed the jury that if it found the confession voluntary they might weigh it for truthfulness; but that if they found it involuntary, they should disregard it. In regard to the truth of the confession, the jury was instructed that a confession obtained by trickery may properly be considered unless the trickery were calculated to make it untrue. D made timely objection to these instructions. What result on appeal? Why?

VI. "The Patriots" is an organization dedicated to the preservation of principles of American Democracy. Its known members make speeches extolling the virtues of free enterprise and social rugged individualism. They also advocate the removal from society, by deportation, of all college professors who do not advocate a return to the gold standard and who approve of *Brown v. Board of Education*. The legislature of State X, somewhat curious about "The Patriots" and thinking they might be neo-Nazis, has authorized an investigation to see if the organization has subversive aims in regard to X. The National President of "The Patriots" was then subpoenaed before the legislative committee conducting the investigation and asked to disclose the names of financial contributors to the organization. This he refused to do on the ground that it would violate his First Amendment rights. He was then asked what organizations he belonged to when he attended college, what his wife's maiden name was, what schools his children attended and what books he had read lately. The President then asked what these questions had to do with the investigation and was told, "Never mind, that's our business. Just answer the questions." D again refused on the same grounds and was thereupon cited for contempt. Should D be convicted of contempt? Why?

VII. State X has enacted a law prohibiting the sale of all goods on Sundays except locally produced meats, vegetables, milk and medicines. P operates a general store near the state line of X and Y and receives all his stock from a wholesaler in Y. P is also a Seventh-Day Adventist who according to the dictates of his conscience closes his store on Saturdays. Thinking that it would be legal to open the store on Sunday because he had closed on Saturday D was arrested and fined in accordance with the law prohibiting Sunday sales. He appeals his conviction, having made a proper record, on the ground that the law under which he was convicted violated his First and Fourteenth Amendment rights as well as Art. I, Sec. 8 of the United States Constitution. Should D succeed? Why?

VIII. A species of especially delicious ducks known as "Backwards" breed in Mexico in the summers and feed in Maine in wintertime. On the way to Maine they feed in Arkansas swamps where hunters have killed them by the thousands thus raising the likelihood of their becoming extinct. Accordingly, Mexico and the United States have entered into a treaty of game conservation and the United States Congress has enacted a law providing that "Backwards" may be hunted and shot in the United States only during the first three days of September. Arkansas, however, has open season on all ducks during all of October and requires a license the price of which is \$5.00 for residents and \$500.00 for non-residents. D, resident of Oklahoma shot a "Backward" in Arkansas on September 1 without having a license and was arrested and fined for violation of Arkansas law. Having made a proper record, he claims violation of his constitutional rights on appeal. What result? Why?

IX. D operates a store on the premises of Fort Eustis, Virginia, a post of the United States Army. Among other things he sells milk, supplied by the United States Government and initially obtained by negotiated contracts with producers, and bread obtained from whatever bakery he can find to fulfill his demands. Assume Virginia has a minimum price law controlling the retail prices of both bread and milk which sets the minimum retail price of milk at 19 cents per qt. and the minimum price of bread at 17 cents per loaf. Assume further that D sells milk for 18 cents^{per qt.} and bread for 16 cents per loaf. Is D liable for violation of the Virginia laws? Why?

X. P produces outboard motors in State Y and distributes them for sale in all other states. In State X, P maintains no branch offices instead using employees who work from their homes in X to make contacts with State X retailers. X has levied a tax on P attributed to the sales in X to X retailers based on unapportioned gross receipts and has also levied a sales tax on P's motors sold by X retailers likewise based on gross receipts. P asks you, an attorney, for advice on whether or not he should challenge these tax laws. What advice will you give him? Why?