#### **Table of Contents**

#### Volume 1

#### CHAPTER 1. INTRODUCTION

- § 1:1 In general
- § 1:2 Finality
- § 1:3 Constitutional fairness

# CHAPTER 2. NATURE OF THE SUBJECT MATTER—HABEAS CORPUS OR CIVIL RIGHTS?

- § 2:1 The basic doctrine
- § 2:2 Application
- § 2:3 Attempts to clarify the doctrine
- § 2:4 References

## CHAPTER 3. THREE COMPETING MODELS FOR FEDERAL HABEAS CORPUS REVIEW

- § 3:1 Introduction
- § 3:2 The "constitutional" model
- § 3:3 The "process" model
- § 3:4 The "innocence" model
- § 3:5 References

### CHAPTER 4. GENERAL HABEAS CORPUS NOTES

- § 4:1 No constitutional right to counsel
- § 4:2 Discovery
- § 4:3 Expediting habeas corpus cases
- § 4:4 Standing
- § 4:5 Relief

### CHAPTER 5. BRIEF EARLY HISTORY OF THE WRIT OF HABEAS CORPUS

- § 5:1 Historical materials
- § 5:2 References

### CHAPTER 6. SCOPE OF HABEAS CORPUS—OVERVIEW

- § 6:1 Early twentieth-century developments
- § 6:2 Relationship to due process
- § 6:3 Relationship to factual innocence—Traditional view
- § 6:4 —Modern developments
- § 6:5 Insufficiency-of-evidence claims
- § 6:6 Noncognizable constitutional claims
- § 6:7 Harmless-error review on habeas corpus
- § 6:8 Nonretroactivity
- § 6:9 Deference to state court decisions
- § 6:10 Nonconstitutional cognizable issues
- § 6:11 References

# CHAPTER 7. SCOPE OF HABEAS CORPUS—NONCOGNIZABLE CONSTITUTIONAL CLAIMS

- § 7:1 The basic restricting doctrine
- § 7:2 Application of the standard
- § 7:3 Possible departure from the standard—Eliminating the "opportunity" portion of the test?
- § 7:4 Relationship between 28 U.S.C. § 2254 and 42 U.S.C. § 1983 on Fourth Amendment claims
- § 7:5 Possible extensions of the restricting doctrine on noncognizable constitutional claims
- § 7:6 References

### CHAPTER 8. SCOPE OF HABEAS CORPUS—NONRETROACTIVITY

- § 8:1 Background
- § 8:2 The current standard
- § 8:3 Selected lower federal court applications of  $Teague\ v$ .  $Lane\ and\ its\ progeny$
- § 8:4 —New rule, with no exception applicable
- § 8:5 —New rule, with exception applicable—First exception
- § 8:6 ——Second exception
- § 8:7 —No new rule
- § 8:8 Teague analysis inapplicable
- § 8:9 —State waiver of the retroactivity defense
- § 8:10 —Miscellaneous
- § 8:11 Selected state cases
- § 8:12 Checklist
- § 8:13 References

## CHAPTER 9. CUSTODY, JURISDICTION, AND VENUE

- § 9:1 The custody requirement
- § 9:2 —Statutes
- § 9:3 —Supreme Court cases
- § 9:4 —Selected lower court cases
- § 9:5 Fully expired sentences
- § 9:6 Jurisdiction and venue
- § 9:7 —Statutes
- § 9:8 —Supreme Court cases
- § 9:9 —Selected lower court cases
- § 9:10 References

## CHAPTER 10. EXHAUSTION OF STATE JUDICIAL REMEDIES—OVERVIEW

- § 10:1 Background
- § 10:2 Status
- § 10:3 The basic doctrine
- § 10:4 Application
- § 10:5 Relaxation of the *Picard* standard?
- § 10:6 How much exhaustion is enough?
- § 10:7 Exceptions to the basic doctrine
- § 10:8 State waiver of the exhaustion defense
- § 10:9 References

## CHAPTER 11. EXHAUSTION OF STATE JUDICIAL REMEDIES—MIXED PETITIONS

- § 11:1 Background
- § 11:2 The current standard
- § 11:3 The petitioner's bind
- § 11:4 State waiver of the exhaustion defense
- § 11:5 Checklist
- § 11:6 —State law and noncognizable constitutional claims
- § 11:7 —Unintended claims
- § 11:8 —Exceptions to the exhaustion doctrine
- § 11:9 —Patently frivolous claims
- § 11:10 —New claims on appeal

## CHAPTER 12. STATE PROCEDURAL DEFAULTS—OVERVIEW

- § 12:1 Background
- § 12:2 The current standard
- § 12:3 The meaning of cause
- § 12:4 —Ineffective assistance of counsel

	TIABLAS CORPOS CHECK
§ 12:5	—Novelty of the constitutional claim
§ 12:6	—Other examples of objective factors external to the defense
§ 12:7	No relaxed standard of cause for pro se litigants
§ 12:8	The meaning of prejudice
§ 12:9	Avoidance of the issue
§ 12:10	The death penalty context
§ 12:11	References
CHAI	PTER 13. STATE PROCEDURAL
DEFA	ULTS—CHECKLIST
§ 13:1	Introduction
§ 13:2	Existence of the state procedural rule
§ 13:3	The independent-and-adequate-state-ground doctrine
§ 13:4	Scope of the state rule
§ 13:5	Compliance with the state rule
§ 13:6	Note—Use of state law
§ 13:7	State court reliance on procedural bar
§ 13:8	Ambiguous state court judgments
§ 13:9	—Background
§ 13:10	—The Harris v. Reed solution
§ 13:11	—The current standard: Coleman v. Thompson
§ 13:12	—The "look through" presumption of Ylst v. Nunnemaker
§ 13:13	—Relationship of the state's plain-error rule to state court reliance on procedural bar
§ 13:14	The miscarriage-of-justice exception
§ 13:15	—Generally
§ 13:16	—The death penalty context: what does it mean to be "actually innocent of the death penalty"?
§ 13:17	State waiver of the waiver defense
CHAI	TER 14. EVIDENTIARY HEARINGS
§ 14:1	Background
§ 14:2	Development of the law
§ 14:3	Relationship between <i>Townsend v. Sain</i> and the
0	presumption of correctness
§ 14:4	Application of the exceptions to the presumption of correctness
§ 14:5	Mixed fact/law determinations
§ 14:6	Selected lower court cases, by circuit
§ 14:7	—First Circuit
§ 14:8	—Second Circuit
§ 14:9	—Third Circuit
§ 14:10	

§ 14:11 —Fifth Circuit

#### Table of Contents

§ 14:12	—Sixth Circuit
§ 14:13	—Seventh Circuit
§ 14:14	—Eighth Circuit
§ 14:15	—Ninth Circuit
§ 14:16	—Tenth Circuit
§ 14:17	—Eleventh Circuit
§ 14:18	—District of Columbia Circuit
§ 14:19	Checklist
§ 14:20	—Hearing by state court
§ 14:21	—State court writing
§ 14:22	—Exceptions
§ 14:23	—Burden
§ 14:24	— —Proper applications
§ 14:25	——Improper or ambiguous applications
§ 14:26	Miscellaneous—Supreme Court cases invoking the presumption of correctness to benefit the petitioner
§ 14:27	—Supreme Court cases employing an exception to the presumption of correctness
§ 14:28	—Important or interesting applications of the presumption of correctness in the lower courts
§ 14:29	References

#### **CHAPTER 15. APPEALS**

- § 15:1 Background § 15:2
- The standard
- § 15:3 Application
- Relationship between the certificate of probable cause § 15:4 and leave to proceed in forma pauperis
- Recharacterization of pro se litigants' papers § 15:5
- § 15:6 References

#### CHAPTER 16. SUCCESSIVE PETITIONS AND ABUSE OF THE WRIT

§ 16:1	Statute and rules
§ 16:2	Successive petitions and abuse of the writ distinguished
§ 16:3	The standard for successive petitions
§ 16:4	Application of the successive-petitions doctrine
§ 16:5	The standard for abuse of the writ
§ 16:6	Application of the abuse-of-the-writ doctrine— Generally
§ 16:7	—The clarity-and-particularity requirement
§ 16:8	—Counsel
§ 16:9	—Relaxed standard for pro se litigants?
§ 16:10	—Prejudice to the government's ability to respond
§ 16:11	—The cause-and-prejudice doctrine

§ 16:12	—Does <i>McCleskey</i> apply to successive petitions as
	well as to abusive petitions?
§ 16:13	—State waiver of the abuse defense
§ 16:14	—Sua sponte dismissals
§ 16:15	-Miscellaneous
§ 16:16	References

#### Volume 2

# CHAPTER 17. THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996 (AEDPA)

(ALD	(A)
§ 17:1	Introduction
§ 17:2	General habeas corpus provisions in AEDPA
§ 17:3	—Counsel
§ 17:4	—Filing deadlines
§ 17:5	—Federal courts' adjudication function
§ 17:6	—Nonretroactivity
§ 17:7	-Exhaustion of state judicial remedies
§ 17:8	—Procedural default
§ 17:9	—Evidentiary hearings and the presumption of correctness of state court findings of fact
§ 17:10	—Appeals
§ 17:11	—Successive petitions or motions and abuse of the writ
§ 17:12	—Effective date
§ 17:13	Provisions for special habeas corpus procedures in capital cases in AEDPA
§ 17:14	—Opt-in structure; counsel requirements
§ 17:15	—Stays of execution
§ 17:16	—Filing deadlines
§ 17:17	—Nonretroactivity; procedural default; scope of federal review
§ 17:18	—Application to state unitary review procedure
§ 17:19	<ul> <li>Limitation periods for determining applications and motions</li> </ul>
§ 17:20	——District court
§ 17:21	——Court of appeals
§ 17:22	—Effective date
§ 17:23	Miscellaneous
§ 17:24	References

#### **APPENDICES**

Appendix A. General References

#### Table of Contents

Appendix B. Habeas Corpus Statutes—28 U.S.C. §§ 2241–2266 (2018)

Appendix C. Statute on Counsel in Death Penalty Cases—18 U.S.C. § 3599 (2018)

Appendix D. Mandatory Detention of Suspected Terrorists—8 U.S.C. § 1226a (2018)

Appendix E. Rules Governing Section 2254 Cases in the United States District Courts, with Forms—28 U.S.C. foll. § 2254 (2018)

Appendix F. Rules Governing Section 2255 Proceedings for the United States District Courts, with Forms—28 U.S.C. foll. § 2255 (2018)

Appendix G. Table of Cases Not Included in the Federal Reports

Table of Cases—Alphabetical
Table of Cases—By Jurisdiction