

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

TABLE OF CONTENTS

**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

- § 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

CHAPTER 13. STATE PROCEDURAL DEFAULTS—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

CHAPTER 14. EVIDENTIARY HEARINGS

- § 14:1 Background
- § 14:2 Development of the law
- § 14:3 Relationship between *Townsend v. Sain* and the 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 —Fourth Circuit
- § 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
§ 15:4	Relationship between the certificate of probable cause and leave to proceed in forma pauperis
§ 15:5	Recharacterization of pro se litigants' papers
§ 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 *McCleskey* 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)

- § 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 —Limitation periods for determining applications and motions
- § 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