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

§ 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

§ 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

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