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

xiv
TABLE OF CONTENTS

§ 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
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 F. Rules Governing Section 2255 Proceedings for
TABLE OF CONTENTS

the United States District Courts, with

Table of Cases—Alphabetical
Table of Cases—By Jurisdiction