CRIMINAL PROCEDURE

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I. CONSTITUTIONAL RESTRAINTS ON CRIMINAL PROCEDURE

A. INTRODUCTION

The development of numerous constitutional limitations upon the manner in which a criminal suspect may be arrested, convicted, and punished has rendered much of criminal procedure an inquiry into constitutional law.

B. INCORPORATION OF BILL OF RIGHTS INTO DUE PROCESS

The first eight amendments to the United States Constitution apply by their terms only to the federal government. However, the Supreme Court has incorporated many of these rights into the due process requirement binding on the states by virtue of the Fourteenth Amendment. Those portions of the Bill of Rights "fundamental to our concept of ordered liberty" have been so incorporated. [Duncan v. Louisiana, 391 U.S. 145 (1968)]

C. CONSTITUTIONAL REQUIREMENTS BINDING ON STATES

The following rights have been held binding on the states under the due process provisions of the Fourteenth Amendment:

1. The Fourth Amendment ***prohibition against unreasonable searches and seizures*** [Wolf v. Colorado, 338 U.S. 25 (1949)], and the ***exclusionary rule*** requiring that the result of a violation of this prohibition not be used as evidence against the defendant [Mapp v. Ohio, 367 U.S. 643 (1961)];

2. The Fifth Amendment ***privilege against compulsory self-incrimination*** [Malloy v. Hogan, 378 U.S. 1 (1964)];

3. The Fifth Amendment ***prohibition against double jeopardy*** [Benton v. Maryland, 395 U.S. 784 (1969)];

4. The Sixth Amendment right to a ***speedy trial*** [Klopfer v. North Carolina, 386 U.S. 213 (1967)];

5. The Sixth Amendment right to a ***public trial*** [*In re* Oliver, 333 U.S. 257 (1948)];

6. The Sixth Amendment right to ***trial by jury*** [Duncan v. Louisiana, 391 U.S. 145 (1968)];

7. The Sixth Amendment right to ***confront witnesses*** [Pointer v. Texas, 380 U.S. 400 (1965)];

8. The Sixth Amendment right to ***compulsory process*** for obtaining witnesses [Washington v. Texas, 388 U.S. 14 (1967)];

9. The Sixth Amendment right to ***assistance of counsel*** in felony cases [Gideon v. Wainwright, 372 U.S. 335 (1963)], and in misdemeanor cases in which imprisonment is imposed [Argersinger v. Hamlin, 407 U.S. 25 (1972)]; and

10. The Eighth Amendment ***prohibition against cruel and unusual punishment*** [Robinson v. California, 370 U.S. 660 (1962)].

D. CONSTITUTIONAL RIGHTS NOT BINDING ON STATES

Two provisions of the Bill of Rights have not been held binding on the states.

1. Right to Indictment
The right to indictment by a grand jury for capital and infamous crimes has been held not to be binding on the states. [Hurtado v. California, 110 U.S. 516 (1884)]

2. Prohibition Against Excessive Bail
It has not yet been determined whether the Eighth Amendment prohibition against excessive bail creates a right to bail (or whether it simply prohibits excessive bail where the right to bail exists) and whether it is binding on the states. However, most state constitutions create a right to bail and prohibit excessive bail.

II. EXCLUSIONARY RULE

A. IN GENERAL

The exclusionary rule is a judge-made doctrine that prohibits the introduction, at a criminal trial, of evidence obtained in violation of a defendant's Fourth, Fifth, or Sixth Amendment rights.

1. Rationale
The main purpose of the exclusionary rule is to deter the government (primarily the police) from violating a person's constitutional rights: If the government cannot use evidence obtained in violation of a person's rights, it will be less likely to act in contravention of those rights. The rule also serves as one remedy for deprivation of constitutional rights (other remedies include civil suits, injunctions, etc.).

2. Scope of the Rule

a. Fruit of the Poisonous Tree
Generally, not only must ***illegally obtained evidence*** be excluded, but also ***all evidence obtained or derived*** from exploitation of that evidence. The courts deem such evidence the tainted fruit of the poisonous tree. [Nardone v. United States, 308 U.S. 338 (1939); Wong Sun v. United States, 371 U.S. 471 (1963)]

Example: D was arrested ***without probable cause*** and brought to the police station. The police read D his *Miranda* warnings three times and permitted D to see two friends. After being at the station for six hours, D confessed. The confession must be excluded because it is the direct result of the unlawful arrest—if D had not been arrested illegally, he would not have been in custody and would not have confessed. [Taylor v. Alabama, 457 U.S. 687 (1982)]

Compare: Police ***have probable cause*** to arrest D. They go to D's home and improperly arrest him without a warrant, in violation of the Fourth Amendment (*see* III.B.2.b.3), *infra*). D confesses at home, and the police then take him to the station. D confesses again at the station. The home confession must be excluded from evidence since it is the fruit of the illegal arrest, but the station house confession is admissible because it is not a fruit of the unlawful arrest. Because the police had probable cause to arrest D, they did not gain anything from the unlawful arrest—they could have lawfully arrested D the moment he stepped outside of

his home and then brought him to the station for his confession. Thus, the station house confession was not an exploitation of the police misconduct; *i.e.,* it was not a fruit of the fact that D was arrested at home as opposed to somewhere else. [New York v. Harris, 495 U.S. 14 (1990)]

1) Limitation—Fruits Derived From *Miranda* Violations
The fruits derived from statements obtained in violation of *Miranda* (*see* IV.D.1., *infra*) may be admissible despite the exclusionary rule. (*See* IV.D.4.b., *infra*.)

b. Exception—Breaking the Causal Chain
Under the fruit of the poisonous tree doctrine, the exclusionary rule can be very broadly applied. Recently, however, the Court has begun to narrow the scope of the rule by balancing its purpose (deterrence of government misconduct) against its costs (exclusion of probative evidence). The Court generally will not apply the rule when it will not likely deter government misconduct. Thus, if there is a weak link between the government misconduct and the evidence (*i.e.,* it is not likely that the misconduct caused the evidence to be obtained), the Court will probably not exclude the evidence.

1) Independent Source
Evidence is admissible if the prosecution can show that it was obtained from a source independent of the original illegality.

Example: Police illegally search a warehouse and discover marijuana, but do not seize it. The police later return to the warehouse with a valid warrant based on information totally unrelated to the illegal search. If police seize the marijuana pursuant to the warrant, the marijuana is admissible. [Murray v. United States, 487 U.S. 533 (1988)]

2) Intervening Act of Free Will
An intervening act of free will by the defendant will break the causal chain between the evidence and the original illegality and thus remove the taint. [Wong Sun v. United States, *supra*]

Example: The defendant was released on his own recognizance after an illegal arrest but later returned to the station to confess. This voluntary act of free will removed any taint from the confession. [Wong Sun v. United States, *supra*]

Compare: The reading of *Miranda* warnings, even when coupled with the passage of six hours and consultation with friends, was not sufficient to break the causal chain under the facts of *Taylor v. Alabama* (*see* 2.a., above).

3) Inevitable Discovery
If the prosecution can show that the police would have discovered the evidence whether or not they had acted unconstitutionally, the evidence will be admissible. [Nix v. Williams, 467 U.S. 431 (1984)]

4) Live Witness Testimony
It is difficult for a defendant to have live witness testimony excluded as the fruit of