Chapter 2
Remedies

CHAPTER OVERVIEW

A *remedy* is a method of rectifying wrongdoing. When a person believes he or she has been harmed in some way, that person may seek relief from the harm, or make the person who caused the harm "pay" for the damage done. A remedy is thus an enforcement mechanism for violations of people's rights. Criminal procedure cannot be fully appreciated without some discussion of the remedies that may be used to cure constitutional rights violations.

Remedies may be legal or extralegal in nature. *Extralegal* remedies are those conducted outside the legal process. An example of an extralegal remedy is vigilantism. If one man is assaulted by another, the assaulted individual may seek revenge and opt to solve the perceived injustice with his fists. *Legal* remedies are remedies made available by the law, by court decisions, or by a police policy or procedure.

The bulk of the discussion in this chapter is on remedies for constitutional rights violations. The most frequently discussed remedy in criminal procedure is the *exclusionary rule*. This rule is a creation of the courts and is not found in any statutes.

CHAPTER OBJECTIVES

The first section of this chapter discusses the exclusionary rule and the so-called "fruit of the poisonous tree" doctrine. The second section touches on criminal remedies other than the exclusionary rule, notably state and federal law. The third section looks at *civil remedies* that are sought by filing lawsuits. The chapter closes with a discussion of *non-judicial remedies*, including internal review, civilian review, and mediation.

1. Summarize the exclusionary rule and the issues associated with it.
2. Summarize the "fruit of the poisonous tree" doctrine and the exceptions to it.
3. Describe criminal prosecution and civil remedies for constitutional rights violations.
4. Describe non-judicial remedies for constitutional rights violations.

LECTURE OUTLINE

THE EXCLUSIONARY RULE

Considered the most significant remedy in criminal procedure, it requires that evidence obtained in violation of the Constitution cannot be used in a criminal trial to prove guilt.

The Rule and Its History

In *Boyd v. United States*, 116 U.S. 616 (1886), the Court held that business records should have been excluded because a compulsory production of the private books and papers of the owner compelled him to be a witness against himself, within the meaning of the Fifth Amendment to the Constitution, and is the equivalent of a

search-and-seizure—and an unreasonable search-and-seizure—within the meaning of the Fourth Amendment.

In *Weeks v. United States*, 232 U.S. 383 (1914), the Court relied solely on the Fourth Amendment as a basis for exclusion. Without a warrant, police entered the home of Fremont Weeks and seized documents that tied him to criminal activity. The Court held that the documents were seized in violation of the Fourth Amendment and should have been returned to Weeks.

In *Silverthorne Lumber Co. v. United States*, 251 U.S. 385 (1920), a similar set of circumstances was presented. Silverthorne allegedly avoided paying taxes. Without a warrant, federal agents seized documents from him and made copies. The Court declared that authorizing such activities would encourage law enforcement to circumvent the Constitution. Justice Holmes stated that without an enforcement mechanism, "the Fourth Amendment [is reduced] to a form of words" and little else.

In *Elkins v. United States*, 364 U.S. 206 (1960), the Court denounced the so-called "silver platter" doctrine, which permitted the use of evidence in *federal* court that had been obtained illegally by *state* officials.

A Turning Point: *Mapp v. Ohio*

In *Mapp v. Ohio*, 367 U.S. 643 (1961), the Supreme Court decided that the exclusionary rule applied to the states. It concluded that other remedies, such as reliance on the due process clause to enforce Fourth Amendment violations, had proven "worthless and futile."

In *Ker* v. *California*, 374 U.S. 23, the Court decided that federal standards must be applied when determining whether the exclusionary rule should apply. States can also apply more restrictive procedures for evaluating admissibility of evidence, but they cannot relax the Mapp standard.

In *Cady v. Dombrowski*, 413 U.S. 433, the Court decided that evidence obtained in violation of a state rule or law that is not of a constitutional dimension need not be excluded under Mapp. It may, however, be excluded under state law.

Applicability of the Exclusionary Rule beyond the Fourth Amendment

There has been some debate concerning the applicability of the exclusionary rule to violations of constitutional rights besides those stemming from the Fourth Amendment. As a general rule, evidence obtained in violation of either the Fifth or Sixth Amendment will be excluded at a criminal trial. However, some issues remain unresolved regarding the applicability of the exclusionary rule to these amendments.

Arguments for and against the Rule

The debate over the exclusionary rule centers on three important issues: (1) whether the rule deters police misconduct; (2) whether the rule imposes unnecessary costs on

society; and (3) whether alternative remedies would be effective and should be pursued.

Critics of the exclusionary rule argue that the rule does very little to deter police misconduct. They claim that most constitutional rights violations are unintentional and the potential for exclusion of evidence will not prevent such accidental violations. They further argue that even in cases where the police act in bad faith, the officers. Critics also claim that any possible benefit of the exclusionary rule is outweighed by its social costs will often commit perjury to mask a constitutional rights violation. They further claim that alternative remedies such as civil litigation, criminal prosecution, and discipline within police departments are effective and should be pursued.

Supporters of the exclusionary rule respond that the rule is not intended to deter individual officers (*specific deterrence*) but is intended to have a broader, systemic deterrent effect (*general deterrence*). This is supported by that fact that many police departments have amended their policies in the wake of the Mapp decision and encouraged their officers to adhere to constitutional safeguards.

Additionally, supporters believe its benefits outweigh the costs. For example, they argue, quite persuasively, that the exclusionary rule is rarely applied. Motions to exclude evidence based on alleged constitutional rights violations are relatively rare, and they succeed even more rarely. Second, supporters believe the rule is beneficial because it *does* help innocent people. Since *Mapp* and other significant decisions, innocent people have been subjected to fewer unconstitutional searches, not only because the police fear the exclusion of evidence, but because of the potential for civil liability, citizen complaints, and the like. Supporters of the exclusionary rule also argue that public cynicism, to the extent it exists, should be directed at wayward government officials, not the exclusionary rule.

The view adopted by this book is that the exclusionary rule applies across the board.

When the Exclusionary Rule Does Not Apply

The exclusionary rule does not apply in following four situations: grand jury investigations, *habeas corpus* proceedings, parole revocation hearings, and civil proceedings.

Exceptions to the Exclusionary Rule

The Supreme Court has seen fit to allow evidence in cases involving honest mistakes as well as other circumstances. There are two exceptions to the exclusionary rule: (1) the “good faith” exception and (2) the impeachment exception.

Good Faith Exception

As a general rule, when an honest mistake is made during the course of a search or seizure, any subsequently obtained evidence will be considered admissible. The “good faith” exception was announced in

two related cases: *United States v. Leon*, 468 U.S. 897 (1984) and *Massachusetts v. Sheppard*, 468 U.S. 981 (1984).

In both the Leon and Sheppard, the Supreme Court concluded that evidence obtained in reasonable (good faith) reliance on a defective warrant was admissible.

Impeachment Exception

In some cases, evidence that has been excluded as direct evidence of guilt may be used for the purpose of impeachment (attacking the credibility) of a witness. This is known as the impeachment exception. The impeachment exception was upheld in *Walder v. United States,* 347 U.S. 62 (1954).

- Teaching Note: An important limit on the impeachment exception is that it applies only to the impeachment of criminal defendants, not other witnesses. This restriction was established in *James v. Illinois*, (493 U.S. 307 [1990]).

The "Fruit of the Poisonous Tree" Doctrine

In the "fruit of the poisonous tree" doctrine, the "poisonous tree" is the initial unconstitutional search or seizure. Anything obtained from the tree is considered "forbidden fruit" that should be excluded. The doctrine was first announced by the Supreme Court in *Silverthorne Lumber Co. v. United States,* 251 U.S. 385 (1920).

The Silverthorne holding was reaffirmed in the case of *Nardone v. United States*, 308 U.S. 338 (1939), a case in which illegally intercepted phone messages formed a vital component of the prosecution's case. The Supreme Court noted that it should be left to the discretion of "experienced trial judges" to determine whether "a substantial portion of the case against [the accused] was a fruit of the poisonous tree."

Exceptions to Fruit of the Poisonous Tree

The "*purged taint*" exception to the fruit of the poisonous tree doctrine is also known as the *attenuation exception.* In Nardone, Justice Frankfurter observed that in some cases, "sophisticated argument may prove a causal link obtained through [illegality] and the government's proof. As a matter of good sense, however, such a connection may have become so attenuated as to dissipate the taint."

The *independent source* exception was first established in *Segura v. United States,* 468 U.S. 796 (1984). In that case, police requested a search warrant to search an apartment based on information they received from a suspect about a drug sale.

The *inevitable discovery* exception states that if evidence would be found regardless of unconstitutional police conduct, then it is admissible. This exception was first recognized by the Supreme Court in *Nix v. Williams*, 467 U.S. 431 (1984).

CRIMINAL PROSECUTION AND CIVIL REMEDIES FOR CONSTITUTIONAL RIGHTS VIOLATIONS

Civil Remedies for Constitutional Rights Violations

Federal Law

At the federal level, the most common statute for holding police officers criminally liable is 18 U.S.C. Section 242. Section 242 is to criminal liability what Section 1983 is to civil liability. It can be used to prosecute either a state or a federal law enforcement officer.

To be held liable under Section 242, a law enforcement officer must act with specific intent to deprive a person of important constitutional (or other federal) rights (*Screws v. United States*, 325 U.S. 91 [1945]).

For criminal liability to be imposed under Section 242, a constitutional right must be clearly established (*United States v. Lanier*, 520 U.S. 259 [1997]).

State Law

Police officers often engage in many actions that would be crimes if performed by ordinary citizens. However, they enjoy immunity from criminal liability for these actions, if the actions are committed (justifiably) as part of their official duties. On these occasions, police officers are shielded from criminal liability by the law enforcement or public duty defense to criminal liability. Beyond the public duty defense, police officers do not have much in the way of defense against criminal liability.

CIVIL REMEDIES FOR CONSTITUTIONAL RIGHTS VIOLATIONS

When a person's constitutional or other federal civil rights are violated, that person can bring a lawsuit in civil court.

- Teaching Note: Discuss with students what the purpose of *civil litigation* is. Aside from sometimes being the only remedy available, civil lawsuits are attractive because money can be awarded. The *plaintiff*, or the person filing the lawsuit, seeks payment for injuries or perceived injuries suffered, known as *damages*. In addition to damages, the plaintiff can also seek *injunctive relief*, which basically means he or she wants the Court to bring the injurious or offensive action to a halt.

42 U.S.C. Section 1983: Liability of State Officials

42 U.S.C. Section 1983 provides a remedy in federal court for the "deprivation of any rights . . . secured by the Constitution and laws" of the United States.

Section 1983 was originally enacted as part of the Ku Klux Klan Act of April 20, 1871 (also known as Section 1 of the Civil Rights Act of 1871). The act was designed to address atrocities being committed by Klan members in the wake of the Civil War, but it did not target Klan members as such. Instead, it imposed liability on state representatives who failed to enforce state laws against illegal Klan activities.

Section 1983 was revived in Monroe v. Pape (365 U.S. 167 (1961). In this case, a group of police officers allegedly entered the home of James Monroe without warning and then forced the occupants to stand naked in the living room while the house was searched and ransacked. Monroe brought a section 1983 action against the police officers and the City of Chicago. The case reached the Supreme Court where eight justices held that the alleged misuse of authority could support a Section 1983 action against the police officers.

Color of Law

One of the requirements for a successful Section 1983 lawsuit is that the defendant, the person being sued, acted under color of law. The Supreme Court has stated that someone acts under color of law when he or she acts in an official capacity (*Lugar v. Edmondson Oil Co*., 457 U.S. 922 [1982]).

One or more of the following conditions are satisfied:

- They have identified themselves as officers.
- They are performing a criminal investigation.
- They have filed official police documents.
- They are making an arrest.
- They are invoking police powers in or outside their jurisdiction.
- They are settling a personal vendetta with police power.
- They are displaying weapons or police equipment.

Constitutional Violation

The second requirement for a successful Section 1983 lawsuit is that a constitutional rights violation has taken place. The plaintiff must establish that the defendant's conduct violated a specific constitutional provision, such as the Fourth Amendment. Not all constitutional rights violations are (or should be) actionable under Section 1983. Recently, the courts have required that constitutional rights violations alleged under Section 1983 be committed with a certain level of culpability. That is, the plaintiff generally has to prove that the defendant officer intended for the violation to occur.

Theories of Liability

The term theory of liability is the legal premise upon which a case rests. It is the legal argument on who should be held accountable—and why. Typically, in Section 1983 cases the plaintiff's lawsuit will target an individual officer, that officer's supervisor, the city or municipality for which the officer works, or any combination of each.

- Supervisory Liability
- Municipal/County Liability
- Individual Liability

Bivens Claims against Federal Officials - A *Bivens claim* is primarily limited to law enforcement officers. Other federal officials enjoy

*absolute immunity***,** meaning that the official cannot be sued under any circumstances, at least as far as their official duties are concerned. Federal officials who enjoy absolute immunity include federal judges (*Bradley v. Fisher*, 80 U.S. 335 [1871]) and federal prosecutors (*Yaselli v. Goff*, 275 U.S. 503 [1927]).

The Qualified Immunity Defense

Qualified immunity is a judicially created defense to a Section 1983 suit, much like the exclusionary rule has been created through judicial decisions. In some cases, qualified immunity is more than a defense; it may afford immunity from suit. Qualified immunity was developed to accommodate two conflicting policy concerns: effective crime control, and the protection of people's civil liberties.

Malley v. Briggs, 475 U.S. 335 (1986) further clarified the standard to be applied to qualified immunity. In that case, the plaintiffs filed a Section 1983 suit alleging that a police officer applied for and obtained a warrant that failed to establish probable cause. Rather than focus on the probable cause issue, the Supreme Court identified the question as being "whether a reasonably well-trained officer in petitioner's position would have known that his affidavit failed to establish probable cause and that he should not have applied for the warrant." It went on to note that "[o]nly where the warrant application is so lacking in indicia of probable cause as to render official belief in its existence unreasonable will the shield of immunity be lost."

NON-JUDICIAL REMEDIES

Three non-judicial remedies are available for police misconduct. First, an *internal review* is a process by which a police department investigates complaints against its own officers. Typically, an internal affairs division takes up this task. The second remedy, *civilian review*, is a mechanism by which private citizens serve in some capacity to review complaints of police misconduct. Not to be confused with civilian review, *mediation* asks an objective third party, such as an ombudsman, to resolve a grievance between a police officer and a citizen who complains of wrongdoing.

Internal Review

Many police agencies have developed innovative and highly respected internal review mechanisms.

Civilian Review

A study of citizen complaints against police has identified three distinct forms of the process: (1) civilian review; (2) civilian input; and (3) civilian monitor. Pure *civilian review* is the strongest form—a civilian panel investigates, adjudicates, and recommends punishment to the police chief. The second strongest form is *civilian input.* In this form, a civilian panel receives and investigates a complaint, leaving adjudication and discipline to the department itself. The weakest of the three, the *civilian monitor* form, leaves

investigation, adjudication, and discipline to the department, but a civilian is allowed to review the adequacy and impartiality of the process.

Mediation

Relying on a neutral third party to render decisions is the most desirable approach to address the problem of police misconduct. In a mediation, a neutral third party, or ombudsman (sometimes called a "mediator" or "arbitrator"), recommends a decision.

LIST OF CHANGES/TRANSITION GUIDE

No significant changes to this chapter.

ADDITIONAL ASSIGNMENTS AND CLASS ACTIVITIES

Activity 1: Have each student find a popular example of the extralegal remedy vigilantism and present these to discuss in class.

Activity 2: Ask the students to write a summary of how the "Fruit of the Poisonous Tree" Doctrine could have played a negative role in the Boston bombing investigation.

ANSWERS TO DECISION-MAKING EXERCISES IN THE TEXT

DECISION-MAKING EXERCISE 2.1

When Does the Exclusionary Rule Not Apply?

In the case on which this exercise is based, one 1958 *Plymouth Sedan v. Pennsylvania* (380 U.S. 693 [1965]), the Supreme Court stated, "[W]e hold that the constitutional exclusionary rule does apply to such forfeiture proceedings" (p. 696). As the Court reasoned:
There is nothing even remotely criminal in possessing an automobile. It is only the alleged use to which this particular automobile was put that subjects Mr. McGonigle to its possible loss. And it is conceded here that the Commonwealth could not establish an illegal use without using the evidence resulting from the search which is challenged as having been in violation of the Constitution. Furthermore, the return of the automobile to the owner would not subject him to any possible criminal penalties for possession or frustrate any public policy concerning automobiles. . . . This distinction between what has been described as contraband per se and only derivative contraband has indeed been recognized by Pennsylvania itself in its requirement of mandatory forfeiture of illegal liquor, and stills, and only discretionary forfeiture of such things as automobiles illegally used. (p. 699)

DECISION-MAKING EXERCISE 2.2

An Act of Good Faith?

This exercise places something of a twist on the "good faith" exception announced in *Arizona v. Evans* in that it deals with reliance on information provided by other police officers. The

Supreme Court has been hesitant to permit a "good faith" defense in such situations. Instead, the Court has favored first determining whether the information that leads to the warrant, and ultimately the police bulletin, withstands Fourth Amendment scrutiny. In *Whiteley v. Warden* (401 U.S. 560 [1971]), the case on which this example is based, the Court held that "[t]he complaint, which did not mention that the sheriff acted on an informer's tip, and which consisted of no more than the sheriff's conclusion that the individuals named committed the offense, could not support the independent judgment of a disinterested magistrate" (p. 560). In other words, all the evidence should have been excluded at trial.

DECISION-MAKING EXERCISE 2.3

The Impeachment Exception

The t-shirt would be admissible under the impeachment exception to the exclusionary rule. As the Supreme Court noted in *United States v. Havens* (446 U.S. 620 [1980]), the case on which this exercise is based:

It is essential . . . to the proper functioning of the adversary system . . . that when a defendant takes the stand, the government be permitted proper and effective cross-examination in an attempt to elicit the truth. (pp. 626–627)

Furthermore, a defendant's statements made in response to proper cross-examination reasonably suggested by the defendant's direct examination are subject to otherwise proper impeachment by the government, albeit by evidence that has been illegally obtained and that is inadmissible on the government's direct case, or otherwise, as substantive evidence of guilt. (pp. 627–628)

DECISION-MAKING EXERCISE 2.4

The "Purged Taint" Exception

The Supreme Court considered a question very much like this in *United States v. Ceccolini* (435 U.S. 268 [1978]). Specifically, it considered whether a witness (such as the employee) who was discovered as a result of an illegal search was considered "fruit of the poisonous tree." Significantly, a four-month period elapsed between the illegal search and the questioning of a witness whose identity was discovered because of the illegal search. The Court admitted the witness's testimony because of the "length of the road" between the search and the testimony. A decision to the contrary, according to the Court, would have opened the door to illegal searches designed to discover witnesses who can supply incriminating testimony against criminal defendants:

Witnesses are not like guns or documents which remain hidden from view until one turns over a sofa or opens a filing cabinet. Witnesses can, and often do, come forward and offer evidence entirely of their own volition. And, evaluated properly, the degree of free will necessary to dissipate the taint will very likely be found more often in the case of live-witness testimony than other kinds of evidence. (pp. 276–277)

DECISION-MAKING EXERCISE 2.5

The Independent Source

It depends on whether probable cause to obtain a warrant existed prior to and independent of the initial warrantless entry. According to the Supreme Court in *Murray v. United States* (487 U.S. 533 [1988]), the case on which this example is based:

Although the federal agents' knowledge that marijuana was in the warehouse was assuredly acquired at the time of the unlawful entry, it was also acquired at the time of entry pursuant to the warrant, and if that later acquisition was not the result of the earlier entry, the independent source doctrine allows the admission of testimony as to that knowledge. This same analysis applies to the tangible evidence, the bales of marijuana. . . . The ultimate question is whether the search pursuant to warrant was in fact a genuinely independent source of the information and tangible evidence at issue. This would not have been the case if the agents' decision to seek the warrant was prompted by what they had seen during the initial entry or if information obtained during that entry was presented to the Magistrate and affected his decision to issue the warrant (p. 533). Incidentally, this case was remanded to the district court to determine whether the independent source exception should be applied.

DECISION-MAKING EXERCISE 2.6

Use of Deadly Force

It would seem so, but in the case on which this exercise was based, one of the federal courts held:

The officers assert that they knew Hegarty [the woman] was armed and therefore feared that Hegarty would injure them or herself. The Court is not persuaded, however, that such fears were reasonable under these facts. In fact, several officers have stated that, just prior to the entry, Hegarty posed no immediate danger to themselves or anyone else…Hegarty repeatedly asked the officers…to leave, but she neither threatened them nor did she fire any shots while the officers were present. In fact, the officers decided to enter Hegarty's home forcibly only after it appeared that she had put down her rifle. Hegarty did not threaten injury to herself at any time, nor were there other individuals in danger (*Hegarty v. Somerset County*, 848 F. Supp. 257 [1994], p. 264).

DECISION-MAKING EXERCISE 2.7

Color of Law

In *Costa v. Frye* (138 Pa. Commw. 388 [1991]), the case on which this example is based, the plaintiffs' lawsuit against the city did not succeed. Here is what the Court said:

Frye [the real name of the defendant officer] participated in a private argument over the use of a poker machine. The fact that the argument escalated to the point where Frye believed it was necessary to draw his gun does not transform the incident into a police matter. Frye's involvement in the fight and response to violence were not an exercise of some power bestowed upon him by the City. Clearly, Frye's conduct cannot be characterized as actions which were made possible only because Frye was a police officer. The City did not require Frye to carry his gun while off-duty and he did not properly assert any authority as a police officer during the altercation. The evidence presented at trial demonstrates that Frye was engaged in a purely private incident which cannot be fairly attributed to the City. We conclude that Frye was not acting under the color of state law while participating in a barroom brawl. (p. 393)

DECISION-MAKING EXERCISE 2.8

Municipal Liability

No. First, no police agency would adopt a formal policy permitting the use of excessive force. Thus, the real issue is the frequency with which events like the one in question have taken place. In fact, the beating was an isolated incident. But even if the plaintiffs could show that this was a common practice, the city would not necessarily be held liable. For that to happen, the practice must have been sanctioned by those high-ranking officials responsible for policymaking. As one court noted, official policy is:
[1] A policy statement, ordinance, regulation, or decision that is officially adopted and promulgated by the municipality's lawmaking officers or by an official to whom the lawmakers have delegated policy-making authority; or [2] A persistent, widespread practice of city officials or employees, which, although not authorized by officially adopted and promulgated policy, is so common and well settled as to constitute a custom that fairly represents municipal policy. Actual or constructive knowledge of such custom must be attributable to the governing body of the municipality or to an official to whom that body had delegated policy-making authority. Actions of officers or employees of a municipality do not render the municipality liable under § 1983 unless they execute official policy as above defined. (*Webster v. Houston*, 735 F.2d 838 [5th Cir. 1984], p. 841)

DECISION-MAKING EXERCISE 2.9

Individual Liability

On close examination of Figure 2.3, it should be clear that deliberate indifference is not the correct standard in this case. The Supreme Court would apply a "shocks the conscience" standard to a substantive due process claim. In the case on which this example is based, *County of Sacramento v. Lewis* (323 U.S. 833 [1998]), the Court stated that "in the circumstances of a high-speed chase aimed at apprehending a suspected offender, where unforeseen circumstances demand an instant judgment on the part of an officer who feels the pulls of competing obligations, only a purpose to cause harm unrelated to the legitimate object of arrest will satisfy the shocks-the-conscience test" (p. 857). In other words, it is now very difficult to succeed with a Section 1983 lawsuit alleging a violation of substantive due process. Had another amendment been invoked by the plaintiffs, the relevant culpability standards would have been lower.

DECISION-MAKING EXERCISE 2.10

The Fourth Amendment and Qualified Immunity

At first, this may seem to be a reasonable decision. But at second glance, after paying special attention to what tests are used to determine Fourth Amendment reasonableness (as well as whether qualified immunity should be granted), a paradox seems evident. The Court basically stated that the officers in this case acted unreasonably with regard to the Fourth Amendment, but because the law in this area was not clearly established, given the limited number of guiding precedents, the officers acted reasonably. Reading between the lines, the Supreme Court sees nothing wrong with declaring certain police conduct to be "reasonably unreasonable."

SUGGESTED ANSWERS TO END-OF-CHAPTER ASSIGNMENTS

1. Define the term remedy, and distinguish between two types of remedies.

A remedy is a method of rectifying wrongdoing. Remedies may be legal or extralegal in nature. Extralegal remedies are those conducted outside the legal process. An example of an extralegal remedy is vigilantism. If one man is assaulted by another, the assaulted individual may seek revenge and opt to solve the perceived injustice with his fists. Legal remedies are remedies made available by the law, by court decisions, or by a police policy or procedure.

2. What is the exclusionary rule? Explain circumstances in which it is applicable beyond the Fourth Amendment.

The exclusionary rule requires that evidence obtained in violation of the Constitution cannot be used in a criminal trial to prove guilt. This rule is not found anywhere in the wording of the Constitution. As a general rule, evidence obtained in violation of either the Fifth or Sixth Amendment will be excluded at a criminal trial.

3. Explain the arguments for and against the exclusionary rule.

Debate over the exclusionary rule centers on three important issues: (1) whether the rule deters police misconduct; (2) whether the rule imposes unnecessary costs on society; and (3) whether alternative remedies would be effective and should be pursued.

Critics of the exclusionary rule argue that the rule does very little to deter police misconduct. They claim that most constitutional rights violations are unintentional and the potential for exclusion of evidence will not prevent such accidental violations. They further argue that even in cases where the police act in bad faith, the officers will often commit perjury to mask a constitutional rights violation.

Critics also claim that any possible benefit of the exclusionary rule is outweighed by its social costs. First, they believe that the exclusionary rule requires throwing out some of the most reliable forms of evidence (such as confessions), freeing criminals who would have been easily convicted. Second, critics believe that innocent people have nothing to gain from the exclusionary rule because they have nothing to be seized by law enforcement officers who would infringe on constitutional protections. Critics also believe that the exclusionary rule creates public cynicism because it allows some individuals to escape prosecution. Finally, critics believe that the exclusionary rule is too extreme, in that a relatively trivial violation by a police officer may result in the exclusion of significant evidence.

Critics of the exclusionary rule further claim that alternative remedies such as civil litigation, criminal prosecution, and discipline within police departments are effective and should be pursued.

Supporters of the exclusionary rule respond that the rule is not intended to deter individual officers (specific deterrence) but is intended to have a broader, systemic deterrent effect (general deterrence).

Supporters of the exclusionary rule, by contrast, believe its benefits outweigh the costs.

For example, they argue that the exclusionary rule is rarely applied. Motions to exclude evidence based on alleged constitutional rights violations are relatively rare, and they succeed

even more rarely. Second, supporters believe the rule is beneficial because it does help innocent people.

4. When does the exclusionary rule not apply?

The exclusionary rule does not apply in following four situations: grand jury investigations, *habeas corpus* proceedings, parole revocation hearings, and civil proceedings.

5. What are the two exceptions to the exclusionary rule?

The "good faith" exception and the impeachment exception.

6. Define the "fruit of the poisonous tree" doctrine, and explain the three exceptions to it.

The "fruit of the poisonous tree" doctrine is the initial unconstitutional search or seizure. Anything obtained from the tree is considered "forbidden fruit" that should be excluded.

Three exceptions:

- Purged Taint. The "purged taint" exception to the fruit of the poisonous tree doctrine is also known as the attenuation exception.
- Independent Source. The independent source exception was first established in *Segura v. United States*, 468 U.S. 796 (1984).
- Inevitable Discovery. The inevitable discovery exception states that if evidence would be found regardless of unconstitutional police conduct, then it is admissible.

7. How does the criminal law operate as a remedy?

Various statutes at the federal and local levels provide criminal remedies for police violations of constitutional rights. Some states make it a criminal offense for police officers to trespass or to falsely arrest people. In fact, most criminal sanctions that apply to ordinary citizens also apply to police officers. Likewise, various statutes at the federal level make it not only improper but also criminal for police officers to engage in certain types of conduct.

8. How does civil litigation act as a remedy?

Civil litigation is sometimes being the only remedy available, civil lawsuits are attractive because money can be awarded. The plaintiff, or the person filing the lawsuit, seeks payment for injuries or perceived injuries suffered, known as damages. In addition to damages, the plaintiff can also seek injunctive relief, which basically means he or she wants the Court to bring the injurious or offensive action to a halt.

9. What are the requirements for a successful Section 1983 lawsuit against an individual police officer? A supervisor? A city or county?

The concept of color of law is a requirement for any successful Section 1983 claim. One of the requirements for a successful Section 1983 lawsuit is that the defendant, the person being sued, acted under color of law. The Supreme Court has stated that someone acts under color

of law when he or she acts in an official capacity (*Lugar v. Edmondson Oil Co*., 457 U.S. 922 [1982]).

One of the requirements for a successful Section 1983 lawsuit is that the defendant, the person being sued, acted under color of law. The Supreme Court has stated that someone acts under color of law when he or she acts in an official capacity (*Lugar v. Edmondson Oil Co*., 457 U.S. 922 [1982]). Typically, in Section 1983 cases, the plaintiff 's lawsuit will target an individual officer, that officer's supervisor, the city or municipality for which the officer works, or any combination of each.

10. **What is a Bivens claim?**

A Bivens claim is primarily limited to law enforcement officers. Other federal officials enjoy absolute immunity, meaning that the official cannot be sued under any circumstances—at least as far as their official duties are concerned.

11. What defense is available to a law enforcement officer charged in a Section 1983 lawsuit?

Qualified immunity is a judicially created defense to a Section 1983 suit, much like the exclusionary rule has been created through judicial decisions. Qualified immunity was developed to accommodate two conflicting policy concerns: effective crime control, and the protection of people's civil liberties.

12. Distinguish among three types of non-judicial remedies.

Internal Review - Process by which a police department investigates complaints against its own officers

Civilian Review - Involving citizens at some stage of the complaint review process

Mediation - Relying on a neutral third party to render decisions

13. What are the varieties of civilian review? How do they differ from one another?

A study of citizen complaints against police has identified three distinct forms of the process: (1) civilian review; (2) civilian input; and (3) civilian monitor. Pure civilian review is the strongest form—a civilian panel investigates, adjudicates, and recommends punishment to the police chief. The second strongest form is civilian input, in which a civilian panel receives and investigates a complaint, leaving adjudication and discipline to the department itself. The weakest of the three, the civilian monitor form, leaves investigation, adjudication, and discipline to the department, but a civilian is allowed to review the adequacy and impartiality of the process.