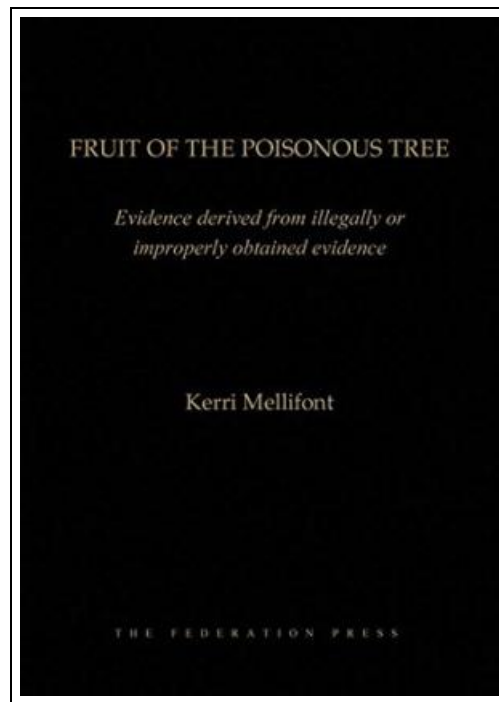


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Federation Press, Australia, 2010. Hardback. Condition: New. Language: English . Brand New Book. .The importance of derivative evidence and the way that courts treat its admissibility cannot be underestimated. In many cases, the determination of whether or not derivative evidence will be admitted has the functional effect of deciding the outcome of a trial. . M Wiseman, The Derivative Imperative: An Analysis of Derivative Evidence in Canada (1997) 39 Criminal Law Quarterly 435, 491. The fate of a criminal trial can be determined by a decision by the trial judge to exclude evidence which has come about by illegal or improper investigative means. An exclusion of a confession obtained involuntarily, or drugs located in an illegal search, can result in the collapse of a case against an accused. Although much has been written in Australia on the rule and discretions to exclude such evidence, little has been written on a particular species of such evidence, that is, evidence which is derived from evidence which has been obtained by illegal or improper investigative means. This is so even though a criminal law practitioner is not infrequently faced with a brief of evidence which contains evidence which has been derived from other evidence which itself was illegally or improperly obtained. Described variously in overseas literature as derivative evidence or fruit of the poisonous tree , this species of evidence gives rise to considerations which are peculiar to it when applying the exclusionary rule and discretions. Thus, the second or subsequent confession obtained after in consequence of an improperly obtained confession may require the judge to think differently on the question of exclusion. Similarly, the bank records located in consequence of scraps of paper found during an illegal search of an accused person s residence may call into play additional factors to weigh...



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